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**REPORT FROM THE COMMISSION**  
**on Competition Policy 2012**

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## **I. LEGISLATION AND POLICY DEVELOPMENTS**

### **EU competition policy as a lever of the Single Market: the EU's main engine for growth**

The key aim of EU competition policy is to protect competition so that markets work better for consumers and businesses. In this regard, EU competition policy supports the Europe 2020 Strategy for smart, sustainable and inclusive growth. In particular, EU competition policy forms an essential part of and a complement to the EU's key asset: its Single Market, which encompasses over half a billion consumers and some 20 million businesses. Tapping the full potential of the Single Market is therefore essential for the EU to recover from the economic and financial crisis and to launch a new period of growth. During the past year, EU competition policy has made significant contributions in terms of protecting, strengthening and developing the Single Market. Crucially, the enforcement of EU competition policy was not relaxed as a result of the crisis, since that would have been directly harmful to the Single Market and the process of economic recovery.

### **State aid**

The economic and financial crisis entailed greater State involvement in the economy, placing burdens on Member States' budgets with increasingly uneven spending capacities. At the same time, such State aid involvement – given its sheer size – created considerable risks of distortions for the Single Market.

#### **The latest figures on the scale of crisis and non-crisis State aid**

The European Commission's 2012 State Aid Scoreboard revealed that the volume of national support to the financial sector actually taken by banks between October 2008 and 31 December 2011 amounted to around EUR 1.6 trillion (13% of EU GDP). The bulk (67%) of that support came in the form of State guarantees on banks' wholesale funding.

Support to the real economy on the basis of temporary crisis rules dropped to EUR 4.8 billion in 2011, a fall of more than 50% compared to 2010, reflecting both a lower uptake by companies and the budgetary constraints of most EU Member States.

Total non-crisis aid decreased and stood at EUR 64.3 billion in 2011, or 0.5% of EU GDP, and continued to re-focus on less distortive horizontal objectives, such as aid for research and innovation, protection of the environment and providing risk capital to SMEs.

The contribution of State aid policy has been crucial throughout the crisis in preserving the integrity of the Single Market. Beyond that, State aid policy can play an important contribution to overcoming the crisis by supporting the Europe 2020 Strategy, for example by favouring a better and more effective use of scarce public resources. In other words, EU State aid policy should facilitate the treatment of aid which is well-designed, targeted at identified market failures and objectives of common interest, and least distortive ("good aid"), while dissuading aid which does not provide real incentives for companies, crowds out private investment, and keeps inefficient and non-viable companies on life support ("bad aid") and harms the Single Market.

## **1. State Aid Modernisation: an overhaul of the State aid rules to strengthen the Single Market and support growth in a context of scarce public resources**

On 8 May 2012 the Commission launched an ambitious State Aid Modernisation programme ("SAM")<sup>1</sup>. SAM aims at orienting scarce public funds towards growth, turning State aid policy into a smart and inexpensive tool to help Member States "achieve more with less".

SAM allows Member States to increase their own level of commitment accordingly. Three key components of the overall objective of SAM – promoting growth in a context of severe budgetary constraints – are outlined below.

### *Making the Single Market stronger, more dynamic and more competitive to support growth*

SAM proposes a framework for assessing whether State aid is compatible with the Single Market which has been tailored to promote efficient and well-designed aid addressing real market failures, directing scarce public resources to common priorities ("good aid"). Priority will be given to, for example, aid for research and development, aid facilitating access to finance for SMEs, aid providing the right incentives for the development of the digital economy, aid that protects the environment, as well as aid that attracts investment to weaker regions.

The review of those rules to ensure compatibility with the Single Market in the context of SAM is based on a coordinated approach rooted in *common principles*, so as to ensure consistency across the different guidelines and block exemptions.

First of all, in light of the opportunity costs of State aid in terms of the costs of taxation and the potential distortions it can bring about, State aid should be granted only where it adds real value. This is the case when aid is directed towards activities that the market does not adequately support<sup>2</sup>; when aid has an incentive effect and when aid is an appropriate instrument to tackle a market failure or an equity objective compared to other available instruments. Finally, State aid should also be efficient, i.e. reach the desired market outcome at the least cost.

At the same time, SAM envisages that the Commission should step up its analysis of potential negative effects of aid measures. Such negative effects include windfall profits, the crowding out of private investment, public spending when similar projects are undertaken without aid, as well as keeping inefficient and non-viable companies on the market. Taxpayers, companies and public authorities would also benefit from more transparency on expenditures and aid beneficiaries.

The operational aim of SAM is to translate those essential building blocks into revised State aid guidelines, thereby further aligning those guidelines with the Europe 2020 Strategy and the Multiannual Financial Framework 2014-2020. This past year progress was made, in particular, on the review of the guidelines for regional aid, research & development & innovation aid, environmental aid as well as aid to risk capital. State aid under those instruments accounts for more than two-thirds of all aid granted in the EU.

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<sup>1</sup> Communication of 8 May 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), COM(2012) 209 final

<sup>2</sup> For example, State aid for risk capital can leverage private investments to sustain start-ups and aid. Aid to R&D has the potential to promote new and otherwise unrealised innovative projects, especially where it increases (rather than replaces) private funding of R&D

### **The Broadband Guidelines: A concrete example of the philosophy underlying SAM**

This past year the Commission adopted new Broadband Guidelines, a set of rules which illustrate concretely the philosophy underlying SAM. The new Guidelines were designed to support pro-competitive investments with public funds in line with the Europe 2020 Strategy in general and the Europe 2020 Digital Agenda flagship initiative in particular; for example, through the creation of the additional category of 'ultra-fast networks' in line with the Digital Agenda targets. The Guidelines will also lay down revised conditions so as to foster investments in rural areas and to ease administrative burdens on smaller projects. Under the Guidelines, aid will always be directed to areas of genuine 'market failure' (i.e. where operators do not invest on commercial terms), verified by detailed mapping and public consultation. The aid beneficiary shall always be selected through a competitive tender procedure, so as to ensure that aid is kept to a minimum and that no technology or company receives an undue advantage. The 'open access' required from the beneficiary company ensures competition in the subsidised area to create optimal conditions for better and cheaper broadband services for consumers. All relevant acts and pertinent information about the aid awarded under aid schemes shall be easily accessible on the Internet by the Member States, economic operators, the interested public and the Commission. Finally, an evaluation may be required for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

#### *Focusing on cases with the biggest impact on the Single Market*

The SAM policy objective here is two-fold: to reduce to the minimum the administrative burdens related to smaller amounts of aid or aid with a limited impact on competition and trade in the Single Market, and to focus on aid which does not provide real incentives for companies, crowds out private investment and keeps inefficient and non-viable companies on life support ('bad aid'). The reduction of administrative burdens should go hand in hand with an increased responsibility of the Member States and with increased transparency and effective evaluation at both national and EU level. The exclusive competence of assessing the compatibility of State aid measures will, as set out in the Treaty, remain with the Commission.

In pursuit of that objective, the Commission adopted a draft *Enabling Regulation*<sup>3</sup> and will subsequently adopt a revised *General Block Exemption Regulation* with the aim of cutting red tape for small and routine cases. The proposal for a new Enabling Regulation provides for the following new categories of aid to be exempted: aid for innovation, aid for culture and heritage conservation, aid to compensate damages caused by natural disasters, aid to forestry as well as certain types of aid for transport and for broadband infrastructure.

#### *Streamlined and clearer rules and faster decisions*

The SAM Communication emphasises the need to clarify and simplify the existing complex legal framework. That challenge will be addressed by providing a better explanation of State aid concepts and a consolidation of horizontal and substantive rules. A key part of the SAM package involves clarifying and better explaining the notion of *State aid*. The Commission sees a substantial value added for Member States and aid granting authorities by providing guidance on the notion of aid, including the key concepts of "advantage" and "selectivity".

The Commission also proposes measures to make its procedures more efficient. On 5 December 2012 the Commission adopted a draft of the new *Procedural Regulation*<sup>4</sup> which would allow the Commission to handle complaints in a manner that is more consistent with its priorities and would ensure that the Commission obtains complete and correct information from the market (market information tools and sector inquiries).

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<sup>3</sup> See MEMO/12/936 of 5 December 2012

<sup>4</sup> See MEMO/12/942 of 5 December 2012

Moreover, the objective to strengthen the Single Market and promote growth can only be achieved if the Commission has the ability to prioritise its work. This efficiency objective will be achieved by introducing filters to improve the quality of the information received from the complainants (e.g. mandatory complaints form) and by making the evaluation of the admissibility of a complaint subject to the existence of an interest to act. Furthermore, under SAM, a complaint will be considered withdrawn where the complainant does not provide meaningful information or fails to cooperate.

Another essential feature of the procedural reform is the power to collect the appropriate information on a case within business-relevant deadlines, which will be achieved by empowering the Commission to obtain faster and more reliable information from market participants if the information at its disposal is not sufficient following the formal investigation procedure. The possibility of conducting sector inquiries to reinforce horizontal information will also allow the Commission to focus on the most distortive cases.

Finally, the role of the national courts shall be reinforced: first, by empowering those courts to obtain information from the Commission for the purpose of applying Article 107(1) and 108 TFEU and to ask the Commission for an opinion; and, second, by empowering the Commission to make oral or written submissions to national courts in the Union public interest (*amicus curiae*).

## **2. Monitoring, recovery and cooperation with national courts**

### *Monitoring existing State aid to ensure a level playing field in the Single Market*

Over the years, the architecture of State aid control has evolved significantly. Today, more than 87% of aid granted to industry and services is not individually examined by the Commission, but is granted on the basis of previously approved aid schemes or under block exemption. DG Competition monitors the way in which Member States apply existing aid schemes.

To further improve the effectiveness of that control which is relevant to the proper functioning of the Single Market, DG Competition decided, in 2011, to significantly enlarge the scope of the monitoring exercise. Although the investigation of a number of cases is still on-going, there seems to be an overall increase in the number of problematic cases. More than one third of the cases monitored in 2011/2012 raise problems of varying types and gravity (non-notified modification of schemes, individual aids exceeding the maximum thresholds, compatibility conditions not properly reflected in the national legal basis etc.). Keeping in mind the limited number of cases monitored thus far (compared to the great number of existing aid schemes), the compliance rate seems to vary across Member States and across different types of aid. The Commission will systematically follow-up all irregularities. At the same time, Member States must step-up their efforts to better comply with the State aid rules.

### *Restoring competition in the Single Market through recovery of State aid granted in contravention of the rules*

To ensure the integrity of the Single Market, the Commission possesses the power to require the granting Member State to recover unlawful aid which has been declared incompatible. In 2012, further progress was made to ensure that recovery decisions are enforced effectively and immediately.

**Much faster recovery of illegal aid**

The most recent figures also show that Member States are also recovering illegal aid much faster, with 75% (around EUR 11.7 billion since December 2004) recovered at the end of December 2012 thanks to the Commission's action and probably facilitated by the pressure to consolidate public finances. This means that the percentage of illegal and incompatible aid still to be recovered was down to 25% by end-December 2012 having stood at 75% at the end of 2004.

By 31 December 2012, the Commission had adopted twelve decisions ordering the recovery of incompatible aid, thereby ensuring the recovery of over EUR 2.4 billion granted by the Member States. As of the end of December 2012, the Commission had 49 pending active recovery cases pending<sup>5</sup> (compared to 94 cases at the end of 2004).

Recovery decisions adopted in 2012	12
Amount recovered in 2012 (in EUR billion)	EUR 2.4 billion
Active recovery cases pending on 31 December 2012	49

A concrete example of aid that is incompatible with the State aid rules and which the Commission decided during the past year that should be recovered is the aid granted by Belgium to BPost, as a public service compensation. That compensation exceeded the costs related to the delivery of newspapers and magazines for the period 2006-2010. On 23 January 2012, the Commission ordered Belgium to recover the incompatible aid. The Belgian authorities diligently fulfilled their obligation by the end of May 2012.

As the guardian of the Treaty, the Commission may use all legal means at its disposal to ensure that Member States implement their recovery obligations, including the launching of infringement procedures. In the first half of 2012, the Court of Justice condemned two Member States pursuant to Article 108(2) TFEU (Italy and Greece) and one Member State pursuant to Article 260 TFEU (Spain) for failure to recover illegal State aid.

*Cooperation with national courts to ensure the effectiveness of State aid rules on the ground*

As a follow-up to the 2009 Notice on the Enforcement of State Aid Law by National Courts, advocacy efforts by the Commission were intensified. In 2012 the Commission was actively involved in financing training programmes for national judges following an annual call for projects and also sent trainers to teach at such workshops and conferences. In February 2012, a dedicated one-day workshop, covering both antitrust and State aid issues relevant for national courts, was organised by the Commission in cooperation with the Association of European Competition Law Judges.

**3. Significant judgments by the EU Courts in the State aid area**

In a number of significant judgments, the EU courts clarified certain aspects of key State aid concepts, such as the notion of aid, the private market economy investor principle and the relationship between State aid and infrastructure.

In Case C-288/11 P, *Mitteldeutsche Flughafen AG et al. v Commission* (also referred to as the *Leipzig Halle airport* case), the Court of Justice, in its judgment of 19 December 2012, dismissed an appeal brought by Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH ('FLH') against the Leipzig-Halle judgment the General Court<sup>6</sup>. The main issue at

<sup>5</sup> Five cases were transferred from the former unit in charge of State aid in DG TREN to DG COMP and are included in the present statistics for the first time this year

<sup>6</sup> Joined Cases T-443/08 and T-455/08 *Freistaat Sachsen and Others v Commission* [2011] ECR II-1311

stake in the appeal was whether the General Court had erred in law by qualifying the financing of the construction of a new runway for the airport as an economic activity. The Court of Justice fully confirmed the General Court's judgment, finding that the General Court had not erred in law in holding that the Commission had correctly considered the construction of the new southern runway by FLH to constitute an economic activity and that, consequently, the capital contributions, apart to the amount to be deducted in respect of expenses linked to the performance of public duties<sup>7</sup>, constituted State aid for the purpose of Article 107(1) TFEU. The Court of Justice held that the General Court had correctly established that the construction of the runway could not be dissociated from the operation of the airport infrastructure, which constituted an economic activity. It had also correctly found that the construction of the runway was not linked to the exercise of State authority.

In its judgment of 5 June 2012 in Case C-124/10P, *Commission v EDF*, the Court of Justice dismissed the Commission's appeal against the EDF judgment of General Court<sup>8</sup>, thus confirming the annulment by the General Court of a Commission decision of 2003 on State aid granted by France to EDF. The judgment is important for the interpretation of the market economy investor principle (MEIP). The issue before the Court was whether, in a situation where a Member State is both a fiscal creditor of a public undertaking and its sole shareholder, that State aid can rely on the MEIP where it makes a capital injection in that undertaking by waiving a tax claim, or whether the MEIP is inapplicable (as the Commission had considered in its decision) in view of the fiscal nature of the claim. The Court ruled that the role of the State as shareholder must be distinguished from its role as public authority and the applicability of the MEIP depends on whether the Member State conferred the fiscal advantage on the undertaking in its capacity as shareholder and not in its capacity as a public authority. The Court then clarified that, for a Member State to demonstrate that it acted in its capacity as a shareholder, it must provide objective and verifiable evidence showing clearly that, before or at the same time as conferring the economic advantage, it took the decision to make the investment concerned. Finally, the Court clarified that the MEIP test is not an exception which applies only if a Member State so requests.

On 28 February 2012, the General Court gave judgment in Case T-268/08, *Land Burgenland et al v. Commission*, concerning a Commission decision in the field of State aid in connection with the privatisation of Bank Burgenland by the Province of Burgenland through a tender procedure. In the final phase of the tender two bids were submitted, one by the Austrian company GRAWE (EUR 100.3 million) and a much higher bid by a Ukrainian Consortium (EUR 155 million). The tender was awarded to GRAWE. The Commission found that the sale constituted State aid for GRAWE because, by not accepting the highest bid, the Province of Burgenland did not behave like a private seller operating in a market economy. In its judgment, the General Court dismissed the actions brought by the Province of Burgenland, the Republic of Austria and the purchaser of the bank. The Court confirmed that in the case of a sale of an undertaking by a public authority the market price corresponds to the highest price that a private investor operating in normal competitive conditions would be prepared to pay. When the public authority makes use of an open, transparent and unconditional tender procedure, it can therefore be presumed that the market price corresponds to the highest offer, provided that it is established, firstly, that that offer is binding and credible and, secondly, that the taking into account of economic factors other than the price is not justified, such as the off balance-sheet risks existing between the offers. Therefore, the Commission did not commit a

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<sup>7</sup> Expenses for security and police functions, fire-protection, German meteorological service and air-traffic control service

<sup>8</sup> Case T-156/04 *EDF v Commission* [2009] ECR II-4503

manifest error of assessment in concluding that the aid element can be assessed from the market price, which itself depends on the offers actually made within the context of the call for tenders.

In Case T-154/10 *France v Commission*, the General Court, in its judgment of the General Court of 20 September 2012, upheld a Commission decision from 2010 finding that *La Poste's* status as an EPIC (Établissement Public à caractère Industriel et Commercial) resulted in an advantage to the undertaking in the form of an implicit unlimited guarantee. The Court confirmed the Commission's finding that French law, in general, did not preclude the possibility for the State to grant an implied guarantee to EPICs. The existence of an unlimited State guarantee in favour of EPICs could, in the Court's view, be derived from the fact that insolvency and bankruptcy procedures under ordinary law do not apply to EPICs. The law applicable to EPIC placed creditors in a more favourable situation as their claims are not cancelled but at the most postponed. Also, the Court found that the Commission was correct in concluding that State liability could be incurred for the debts of an EPIC where a creditor of an EPIC was not able to recover its claim from the undertaking which amounts to an automatic guarantee mechanism. Finally, the principle of continuity of public service requires that the rights and obligations attached to the public service are transferred to the State in the event of a wound-up EPIC which triggers State liability. With regard to the question of whether that unlimited guarantee resulted in an advantage for La Poste, the Court confirmed the Commission's finding that the grant of a guarantee on non-market terms is, as a rule, liable to confer an advantage on the recipient. The Commission was allowed to refer to the findings of rating agencies to establish that La Poste enjoyed more favourable terms of credit and, therefore, a financial advantage.

## Antitrust & Cartels

### 1. Moving towards a formal proposal on private enforcement of the EU antitrust rules

In 2012, the Commission continued preparatory work on a legislative proposal on antitrust damages actions<sup>9</sup>. As stated in the Commission Work Programme 2012 (Annex I, item 7), the objective of this legislative initiative would be to ensure effective damages actions before national courts for breaches of EU antitrust rules and to clarify the relationship between such private actions and public enforcement by the Commission and the national competition authorities, notably as regards the protection of leniency programmes, in order to preserve the central role of public enforcement in the EU<sup>10</sup>. In February 2012, the European Parliament welcomed the initiative and underlined the need for action at European level<sup>11</sup>. Insofar as collective redress is concerned, the European Parliament requested that any Union initiative should be of a horizontal nature, not limited to specific sectors of Union law. However, the Parliament acknowledged the specificity of competition law enforcement and therefore considered that specific rules could be laid down in separate articles or chapters of the

<sup>9</sup> As stated in the Commission Work Programme 2012 (Annex I, item 7), the objective of this legislative initiative would be to ensure effective damages actions before national courts for breaches of EU antitrust rules and to clarify the relationship between such private actions and public enforcement by the Commission and the national competition authorities, notably as regards the protection of leniency programmes, in order to preserve the central role of public enforcement in the EU. The Work Programme is available at:

[http://ec.europa.eu/atwork/key-documents/index\\_en.htm](http://ec.europa.eu/atwork/key-documents/index_en.htm)

<sup>10</sup> The Work Programme is available at: [http://ec.europa.eu/atwork/key-documents/index\\_en.htm](http://ec.europa.eu/atwork/key-documents/index_en.htm)

<sup>11</sup> European Parliament resolution of 2 February 2012 on the Annual Report on EU Competition Policy, also available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0031+0+DOC+XML+V0//EN>



horizontal instrument itself or in separate legal instruments in parallel or subsequent to the adoption of the horizontal instrument<sup>12</sup>.

On 6 December, Vice President Almunia declared his intention to submit to the College a legislative proposal on certain rules governing actions for damages under national law for infringements of Articles 101 and 102 TFEU. He stated that such a proposal, once adopted, would give more legal certainty on a number of issues that lie at the crossroads between the public and private enforcement of EU competition law, in particular regarding access to evidence relating to leniency requests. Also, the Vice President took due note of the European Parliament's call for a European initiative on collective redress to ensure appropriate access to justice for all. He declared his willingness to continue to work towards a coherent European policy on collective redress, while drawing attention of the Parliament to the specificities of competition law.

## **2. Further refining the leniency regime: a core enforcement tool in the fight against secret cartels**

Leniency programmes constitute a key driver for the detection of cartels. The European Competition Network (ECN) recently strengthened the Model Leniency Programme (“MLP” around which the ECN competition authorities align their own leniency procedures. Under the refined MLP, agreed in November by the Heads of the competition authorities within the ECN, all leniency applicants applying to the European Commission in cases concerning more than three Member States will now be able to submit a summary application to national competition authorities while in the past only the immunity applicant could do so. Also, the ECN agreed on a standard template for summary applications, which companies will be able to use in all Member States. A number of clarifications are introduced in the MLP, notably in relation to the conditions which applicants must meet in order to qualify for leniency, including on the duty to cooperate. The revised text also clarified that written leniency statements should benefit from the same level of protection against disclosure by the competition authorities as oral statements. Furthermore, the ECN underlined the importance of the leniency programmes in a Resolution endorsed on 23 May, in which the competition authorities took the joint position that leniency materials should be protected against disclosure to the extent necessary to ensure the effectiveness of the leniency programmes<sup>13</sup>. The legislative proposal on antitrust damages actions mentioned above will seek to ensure the effectiveness of the leniency system.

### **Settlements: an additional tool for the cost-effective resolution of antitrust proceedings**

Settlement continues to be a key tool, entailing significant procedural benefits. The fact that the number of settlement decisions decreased in 2012 as compared to 2011 should not be interpreted as a trend, in view of the number of cases where the settlement route is pursued or considered. The Commission's policy is to use this efficiency-enhancing instrument in the future if a case is suitable for settlement in order to free more quickly additional resources to fight other cases including via ex officio proceedings. In 2012, the Commission adopted one such decision, fining producers of water management products EUR 13 million in sixth cartel settlements (Cases COMP/39611 Water Management Products, press release of 27 June 2012).

<sup>12</sup> See points 15 and 17 of European Parliament resolution of 2 February 2012 on ‘Towards a Coherent European Approach to Collective Redress’ available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0021&language=EN&ring=A7-2012-0012>

<sup>13</sup> Resolution of the Meeting of the Heads of the European Competition Authorities of 23 May 2012

### 3. Significant judgments by the EU Courts in the area of antitrust

In *MasterCard*<sup>14</sup> the General Court dismissed an action brought by MasterCard against a Commission decision of 2007 prohibiting MasterCard's cross-border inter-bank fees. The judgment is important because it confirms the Commission's finding that these fees restrict competition as they inflate the cost of card acceptance by merchants without leading to benefits for consumers. The judgment also confirms that banks, in the framework of a card payment scheme, cannot restrict competition by agreeing on certain charges to the detriment of consumers.

MasterCard's business model includes a mechanism through which banks indirectly determine a minimum price that merchants must pay for accepting the organisation's payment cards. This mechanism comprises a complex network of multilaterally agreed inter-bank fees which industry refers to as "multilateral interchange fees" or MIFs.

In December 2007, the Commission prohibited MasterCard's collectively agreed multilateral interchange fees because they inflate the base on which acquiring banks charge prices to merchants, as the interchange fees account for a large part of the final price merchants pay for accepting MasterCard's payment cards. This restriction of price competition in the form of a decision of an association of undertakings was found to harm businesses and their customers, in breach of Article 101 of the Treaty on the functioning of the EU (TFEU) that prohibits anticompetitive business practices. There was also no evidence that such fees generated benefits that were passed on to consumers.

In its judgment, the General Court rejected MasterCard's claims and upheld the Commission's finding of an infringement. In particular, the Court endorsed the Commission's view that multilateral interchange fees constitute a restriction of competition as they were found to produce anticompetitive effects and rejected MasterCard's argument that such fees were objectively necessary for the functioning of its system. Also, the Court endorsed the Commission's finding that MasterCard constituted an association of undertakings in the sense of Article 101(1) TFEU, even after the company's listing at the New York Stock Exchange in 2006. The Court also took the view that the Commission did not commit procedural errors and that the prohibition it imposed was proportionate.

MasterCard has appealed the General Court's judgment to the Court of Justice (Case C-382/12 P pending).

In *AstraZeneca*<sup>15</sup> the Court of Justice dismissed an appeal brought by AstraZeneca against the judgment by the General Court of 2010 which had upheld – to a very large extent – a Commission's decision from June 2005. The Commission had fined AstraZeneca EUR 60 million for abusing its dominant position relating to its best-selling anti-ulcer medicine Losec.

The judgment concerned two types of misuses of regulatory procedures and systems. It did not concern abuses or misuses of patents or other intellectual property rights. The first abuse upheld by the Court involved the provision by AstraZeneca of misleading information to national patent offices with the aim of preventing or delaying market entry of competing generic products. On the first abuse the Court found that the assessment whether representations made to public authorities for the purposes of improperly obtaining exclusive

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<sup>14</sup> Case T-111/08, *MasterCard and Others v Commission*, judgment of 24 May 2012

<sup>15</sup> Case C-457/10 P *AstraZeneca v Commission*, judgment of 6 December 2012

rights are misleading must be made *in concreto* and may vary according to the specific circumstances of each case.

The second abuse involved the deregistration by AstraZeneca of its market authorisation for its bestselling ulcer medicine Losec in selected countries with the aim of raising barriers against generic entry and parallel trade. The Court stated that an undertaking which holds a dominant position has a special responsibility under Article 102 and that it cannot therefore use regulatory procedures in such a way as to prevent or make more difficult entry of competitors on the market, in the absence of grounds relating to the defence of legitimate interests of an undertaking engaged in competition on the merits or in the absence of objective justification.

The Court found that the illegality of abusive conduct under Article 102 is unrelated to the compliance or non-compliance by an undertaking of other legal rules and that, in the majority of cases abuses of dominant positions consist of behaviour which is otherwise lawful under branches of law other than competition law.

The Court's judgment also clarifies many issues in relation to the product market definition. The judgment also confirms that IPRs constitute a factor relevant to the determination of dominance. The Court's judgment finds that a dominant position is not prohibited, only its abuse and a finding that an undertaking has such a position is not in itself a criticism of the undertaking concerned.

**Cartel judgments: the Courts confirm the Commission's approach to parental liability**

In a number of judgments (e.g. Case T-344/06 *Total v Commission*, paras 97-109; Case T-347/06 *Nynäs Petroleum and Nynas Belgium v Commission*, paras 30-41, judgments of 27 September 2012.), the Courts confirmed the Commission's approach to parental liability. For example, the Courts delivered some orders (Case 404/11P *Elf Aquitaine v Commission*, para 23, order of 2 February 2012; Case C-421/11P *Total and Elf Aquitaine v Commission*, paras 40-59, order of 7 February 2012; C-493/11P *United Technologies v Commission*, paras 37-45, order of 15 June 2012.) in which it again made clear that it fully upholds the rebuttable presumption that anti-competitive conduct by a wholly owned or virtually wholly owned subsidiary can be attributed to the parent company unless the parent proves that its subsidiary decides its commercial strategy on the market in full autonomy. The General Court also accepted the application of the rebuttable presumption in case of the ownership by two parents which form part of one group and together hold 100% of the subsidiary's shares and upheld in two other judgments the imputation of parental liability in a 50/50 joint venture, applying the concept of "single economic entity" to joint venture constellations (Case T-76/08 *EI du Pont de Nemours and Others v Commission*, paras 59 and 76, judgment of 2 February 2012; Case T-77 *Dow Chemicals v Commission*, paras 74, 106-112 and 151, judgment of 2 February 2012). The General Court also accepted that the investment company can be liable for the conduct of its portfolio company (Case T-392/09 *I.garantovana v Commission*, judgment of 12 December 2012).

In the *Dutch Bitumen* cartel case, the General Court handed down 16 judgments in which it, for the most part, upheld a 2006 Commission decision that a number of petrochemical companies supplying road pavement bitumen and their road building clients had participated in a cartel with regard to the supply of road pavement bitumen in the Netherlands<sup>16</sup>. The General Court also provided guidance on the scope of the obligation of undertakings to cooperate during inspections<sup>17</sup>.

In *Nexans* and *Prysmian*, it provided guidance on the Commission's investigatory powers, such as the legal requirements of an inspection decision<sup>18</sup>. It also considered that measures

<sup>16</sup> See in particular Case T-357/06 *KWS v European Commission*, judgment of 27 September 2012

<sup>17</sup> See in particular Case T-357/06 *KWS v European Commission*, judgment of 27 September 2012

<sup>18</sup> Cases T-135/09 *Nexans v Commission* and T-140/09 *Prysmian v Commission*, judgments of 14 November 2012

implementing the inspection decision such as taking copies and images of electronic documents and asking questions during an inspection could not be challenged separately but only in the context of an action for annulment of the final decision adopted by the Commission under Article 101(1) TFEU<sup>19</sup>.

In *Bolloré*, the General Court found that in a re-adoption scenario following the annulment of a decision due to a procedural error, the re-imposition of a fine in a new procedure which remedies the error is neither proscribed nor infringes the party's rights of defence<sup>20</sup>.

In *Calcium Carbide*, the General Court confirmed the Commission's analysis of the parties' requests for fines reductions because of their alleged inability to pay (ITP) and concluded that the Commission made no error when rejecting all ITP claims based on point 35 of the Fining Guidelines<sup>21</sup>.

#### **4. The fight against cartels**

The Commission continued its vigorous enforcement of the competition rules against cartels, arguably the form of anticompetitive conduct which harms consumers, the Single Market and the economy to the greatest extent. In 2012, the Commission adopted five cartel decisions imposing fines totalling EUR 1 875 694 000 and concerning products of importance for consumers. The scope of some of the cases was particularly large, with several different infringements dealt with in one decision. The Commission also launched new investigations in a number of sectors, including financial services (derivatives), car parts, the food sector and maritime transport services. Several inspections were carried out to that effect. The Commission furthermore issued three Statements of Objections in cartel cases<sup>22</sup>.

##### **The TV and computer monitor tubes case: fines of EUR 1.47 billion imposed for a decade-long international cartel**

On 5 December, the European Commission fined seven international groups of companies a total of EUR 1 470 515 000 for participating in either one or both of two distinct cartels in the sector of cathode ray tubes ("CRT"). For almost ten years, between 1996 and 2006, these companies fixed prices, shared markets, allocated customers between themselves and restricted their output. One cartel concerned colour picture tubes used for televisions and the other one colour display tubes used in computer monitors. The cartels operated worldwide. The infringements found by the Commission covered the entire European Economic Area (EEA). *Chunghwa*, *LG Electronics*, *Philips* and *Samsung SDI* participated in both cartels, while *Panasonic*, *Toshiba*, *MTPD* (currently a Panasonic subsidiary) and *Technicolor* (formerly Thomson) participated only in the cartel for television tubes. Chunghwa received full immunity from fines under the Commission's 2006 Leniency Notice for the two cartels, as it was the first to reveal their existence to the Commission. Other companies received reductions of their fines for their cooperation in the investigation under the Commission's leniency programme.

Cathode ray tubes constitute a very important component in the making of television and computer screens, accounting for 50 to 70% of the price. The two cartels are among the most organised cartels that the Commission has investigated. For almost ten years, the cartelists carried out the most harmful anti-competitive practices including price fixing, market sharing, customer allocation, capacity and output coordination and exchanges of commercial sensitive information. The cartelists also monitored the implementation, including auditing compliance with the capacity restrictions by plant visits in the case of the computer monitor tubes cartel.

<sup>19</sup> Cases T-135/09 *Nexans v Commission* and T-140/09 *Prysmian v Commission*, judgments of 14 November 2012

<sup>20</sup> Case T-372/10 *Bolloré*, judgment of 27 June 2012

<sup>21</sup> Case T-400/09 *Ecka Granulate v Commission*, judgment of 12 December 2012.

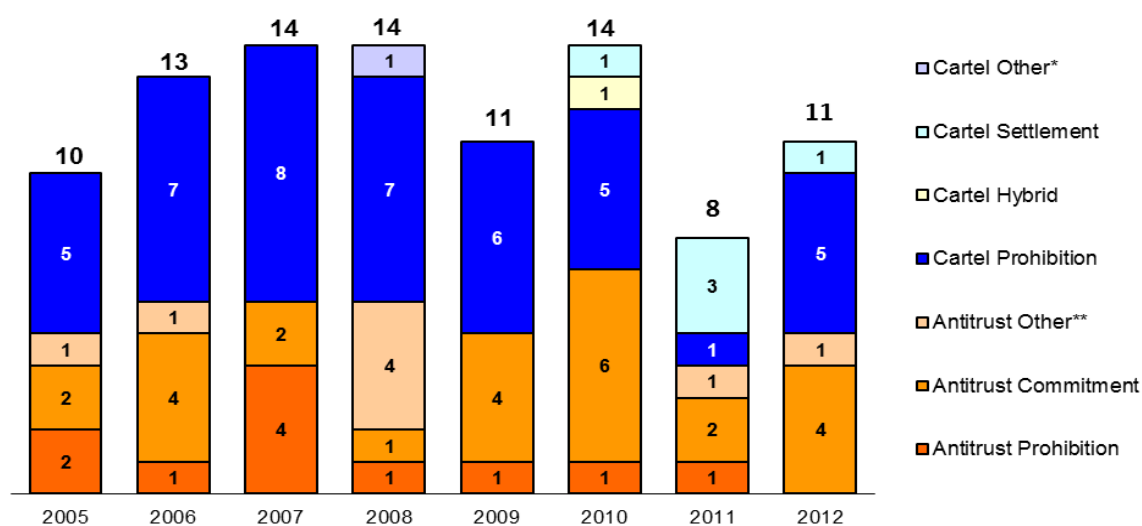
<sup>22</sup> Cases COMP/39611 *Water Management Products*, press release of 27.6.2012, IP/12/704; COMP/39633 *Shrimps*, press release of 13.7.2012; IP/12/782, COMP/39639 *ODD*, press release of 24.7.2012, IP/12/830 and COMP/39583 *Retail Food Packaging*, press release of 28.09.2012, IP/12/1044 (with five different infringements covered by the same Statement of Objections)

There are 7 undertakings in TV & Computer Monitor tubes: MTPD and Panasonic (together with Toshiba for the JV period) formed only one undertaking

Case name	Adoption date	Fine imposed	Undertakings concerned	Procedure
Cathode ray tubes	05/12/2012	1 470 515 000	7	Normal
Gas insulated switchgear	27/06/2012	136 260 000	2	Re-adoption (normal)
Water management products	27/06/2012	13 661 000	3	Settlement
Freight forwarding	28/03/2012	169 382 000	15	Normal
Mountings for windows and window doors	28/03/2012	85 876 000	9	Normal

The Water Management Products decision was adopted following the settlement procedure. That brought to six the total number of settlement cases adopted since the procedure was introduced in 2008.

### Antitrust and cartel output



\* Rejection of complaint \*\* Rejection of complaint, procedural infringement, penalty payment  
Source: Directorate-General for Competition

## 5. Effective cooperation within the European Competition Network and with national courts

*Convergence of antitrust enforcement procedures contributes to a more level playing field in the Single Market*

Regulation 1/2003 was a key step in providing a more level playing field for businesses operating cross-border in the Single Market, as all EU competition enforcers including the

national competition authorities (NCAs) and national courts are able to apply the EU antitrust rules to cases that affect trade between Member States. This has meant that to a large extent the EU antitrust rules have become embedded across the Single Market. The European Commission and the NCAs cooperate closely within the European Competition Network (ECN) to ensure that the EU antitrust rules are applied coherently.

While the NCAs now regularly apply the same substantive competition rules, they do so according to divergent procedures and they may impose a variety of sanctions. Even if competition national procedures are increasingly converging in the way they enforce EU antitrust law, as the 2009 Report on the functioning of Regulation 1/2003<sup>23</sup> had already found, differences on important aspects still remain which necessitates further examination and reflection.

In the field of leniency, already in 2006 the ECN agreed on the ECN Model Leniency Programme (MLP) which has acted as a major catalyst in encouraging Member States and/or NCAs to introduce and develop their own leniency policies and in promoting convergence between them. In November 2012, the ECN further refined the MLP, as explained above.

In November 2012, Reports by the ECN on investigative and decision-making powers were published, which for the first time provide an overview of the enforcement procedures within the ECN. These Reports demonstrate that national legislators have made clear efforts to make their procedures for the enforcement of Articles 101 and 102 TFEU more convergent. Basic elements of decision-making powers and procedures, such as the power to take prohibition or commitment decisions or to grant interim measures are present in all or in a vast number of jurisdictions. Moreover, procedural steps that are crucial in terms of safeguarding the rights of defence of parties (such as the right to be heard through a statement of objections or equivalent; access to file) are present in all jurisdictions in one form or another.

However, this has not led to uniformity. Divergence subsists on a few fundamental questions such as whether competition authorities have the power to set priorities or the legal framework for conducting interviews, as well as numerous aspects at a more detailed level, including the criteria for adopting interim measures and sanctions for non-compliance with investigatory measures. The Reports are intended to provide a basis for informed debate about the need for further procedural convergence within the ECN. The ECN will continue looking into this matter, in order to further enhance the level playing field for companies operating in the Single Market.

#### **Continuing the close cooperation with national courts**

As regards cooperation with national courts, the Commission continued to support the coherent and consistent application of EU competition rules at national level. The Commission now publishes its opinions and *amicus curiae* observations on its website<sup>24</sup> as soon as it receives the approval for publication by the national court to which the opinion or observation was submitted. In 2012, the Commission submitted three *amicus curiae* observations under Article 15(3) of Regulation 1/2003 on different matters to courts in Belgium<sup>25</sup>, France<sup>26</sup> and

<sup>23</sup> See Commission Communication (COM (2009)206 final)

<sup>24</sup> Opinions and *amicus curiae* observations are available at [http://ec.europa.eu/competition/court/overview\\_en.html](http://ec.europa.eu/competition/court/overview_en.html)

<sup>25</sup> In its observation (available at the link in footnote 4) the Commission held that tax deductibility of fines imposed by the Commission for infringements of Articles 101 and 102 TFEU would undermine the deterrent character of such fines and is contrary to the principle of loyal cooperation as laid down in Article 4(3) TEU

<sup>26</sup> The Commission's observations concerned the interpretation of the notion of a "restriction by object" under Article 101 (3) TFEU

Slovakia<sup>27</sup>. The Belgian Constitutional Court followed in its judgment of 20 December 2012 the observations submitted by the Commission, while the two other cases are still pending. In two of the three *amicus curiae* observations submitted by the Commission in 2011, the receiving courts followed the Commission's observations in judgments handed down in 2012. The first case concerned possible *inter partes* disclosure of various documents, some of which contained information specifically prepared for the purpose of an application under the Commission's leniency programme<sup>28</sup>. The second case concerned the interpretation of the notion of "appreciable effect on trade between Member States"<sup>29</sup>. In the third case the receiving court submitted a reference for a preliminary ruling to the ECJ<sup>30</sup>.

Cooperation with national courts was furthermore supported by the continued funding of a competition-specific training of judges program by the Commission<sup>31</sup>.

## **6. Developing the international dimension of EU competition policy**

The globalisation of the economy calls for closer cooperation among competition authorities not only in Europe, but also across the globe. Such cooperation is essential to ensure interoperability between and consistency in the outcome of enforcement activities carried out by different authorities, to enhance the effectiveness of their investigations and to secure a level playing field for EU businesses in world markets. As in the past, and as encouraged by the European Parliament, the Commission has engaged in policy dialogues with the authorities in a number of other jurisdictions, at both multilateral and bilateral level, so as to promote convergence on both substantive and procedural competition rules. The Commission has also continued to cooperate closely with many competition agencies in concrete enforcement activities.

At bilateral level, in 2012 the Commission strove to further strengthen cooperation with non-EU competition authorities, focusing its efforts mainly on the EU's main trading partners (both traditional trading partners and major emerging economies). In this respect, high-level dialogues were held in 2012 with representatives of all the competition agencies with which the EU has concluded a cooperation agreement or a Memorandum of Understanding<sup>32</sup>. Likewise, the Commission engaged in fruitful discussions with the US federal competition authorities with a view to improving cooperation in the area of unilateral conduct, mergers and airline alliances. In the margin of the EU-China Summit on 20 September, DG Competition signed a Memorandum of Understanding for Cooperation in the area of anti-monopoly law with the National Development and Reform Council (NDRC) and the State Administration of Industry and Commerce (SAIC), the two Chinese authorities responsible for the enforcement of the antitrust provisions of the Anti-Monopoly Law. On 1 June, the Commission recommended to the Council to sign and conclude a "Second Generation" cooperation agreement between the EU and Switzerland.

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<sup>27</sup> The Commission's observations concerned issues related to the parallel application of Articles 102 TFEU and the corresponding provisions in national law and to the possibility for a national competition authority to impose a fine for an infringement of the general prohibition of abuse of a dominant position laid down in Article 102 TFEU

<sup>28</sup> Judgment of the High Court of England and Wales in *National Grid* on 4 April 2012 (available at [http://ec.europa.eu/competition/court/overview\\_en.html](http://ec.europa.eu/competition/court/overview_en.html))

<sup>29</sup> Judgment of the French Supreme Court (Cour de Cassation) on 31 January 2012 (available at [http://ec.europa.eu/competition/court/overview\\_en.html](http://ec.europa.eu/competition/court/overview_en.html))

<sup>30</sup> Case C-681/11 *Bundeswettbewerbsbehörde/Schenker and others*, lodged by the Austrian Supreme Court (Oberster Gerichtshof)

<sup>31</sup> In 2012, the Commission funded eleven training programs in nine Member States. Further details are available at <http://ec.europa.eu/competition/court/training.html>

<sup>32</sup> USA, Canada, Japan, South Korea, China, Brazil and Russia

Negotiations on a similar agreement between the EU and Canada have been progressing well. The European Commission continued negotiating Free Trade Agreements with a large number of third countries which all include competition chapters. The negotiation of the Free Trade Agreement with Singapore was concluded in 2012 and it contains a substantial chapter not only on antitrust, mergers and SOEs but also on subsidies to services and goods. In addition, the Commission continued to engage in technical cooperation activities with other non-EU competition authorities, in particular with the Chinese and Indian competition authorities.

With respect to the accession negotiations with candidate countries, significant progress was made in 2012 with the opening and the provisional closure of the competition chapter with Iceland. In 2012 the Commission continued to monitor closely the implementation of the provisions of the steel and shipbuilding protocol included in the Accession Treaty for Croatia.

The Commission has also continued its active engagement with international competition related fora such as the Competition Committee of the OECD, the International Competition Network and Unctad. In 2012, it took up responsibility as a co-chair of the Mergers Working Group of ICN and moved to a co-chair position of one of the Sub-Groups of the Cartel Working Group. In that same year, the Commission was also given responsibility as project leader (together with US FTC) for the Steering Group projects on investigative processes in competition enforcement activities.

## **Merger control**

### **1. Deepening cooperation with competition authorities in the Member States and third countries**

The EU merger control regime is essential in protecting consumer welfare by preventing market structures that could lead to unjustified price increases or reduction of choice, quality or innovation. It thus continues to be a key instrument for keeping the Single Market open and competitive, particularly in times of economic and financial crisis.

Merger control by the Commission applies to transactions exceeding the significant turnover thresholds set up in the Merger Regulation and which have an impact on the market beyond the national borders of a particular Member State. Such mergers are reviewed exclusively at EU level in application of a ‘one-stop shop’ system. Concentrations not covered by the Merger Regulation fall, in principle, within the remit of the Member States. However, the Merger Regulation leaves scope for re-allocating cases from the national competition authorities (NCA) to the Commission and vice versa in order to ensure that the best placed authority deals with a case. In 2012, based on referral requests by two national competition authorities, the Commission became competent for reviewing a case<sup>33</sup>. Cooperation between the Commission and the NCAs can also become an important element outside the referral system<sup>34</sup>.

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<sup>33</sup> Case COMP/M.6796 *Aegean /Olympic II*

<sup>34</sup> Case COMP/M.6497 *Hutchison 3G Austria/Orange Austria*, decision of 12.12.2012, press release of 12.12.2012, IP/12/1361



Cooperation also proved important with non-EU countries. A number of cases<sup>35</sup> involved intense cooperation with various competition authorities around the world. In these cases cooperation was particularly close with the authorities in the United States.

Further, a reflection on a review of the Merger Regulation itself has been launched, in particular in relation to covering the acquisition of non-controlling minority shareholdings.

## **2. A significant increase in number decisions with commitments from 2011**

The number of merger notifications in 2012 remained relatively stable. Overall, 283 cases were notified to the Commission in 2012, which represents about the average of the last four years. The Commission opened ten in-depth (i.e. second phase) investigations covering several sectors such as IT, mobile telephony, air transport, basic industries and music.

The number of decisions by the Commission increased significantly in 2012 compared to 2011, but remains stable compared to the average of the last four years. Whereas the number of prohibition decisions remains unchanged compared to 2011, with one case concluded by prohibition decision in 2012<sup>36</sup>, six decisions<sup>37</sup> in second phase were concluded with commitments in 2012 compared to one in 2011. In first phase, the number of clearance decisions which were adopted with commitments almost doubled with nine compared to five in 2011.

As reflected in the increased number of second phase investigations and commitments in second phase decisions the assessment of the notified transactions also became more complex in 2012, a trend already observable in 2011. The review of, in particular, the second phase investigations generally requires sophisticated quantitative and qualitative analyses involving large amounts of data.

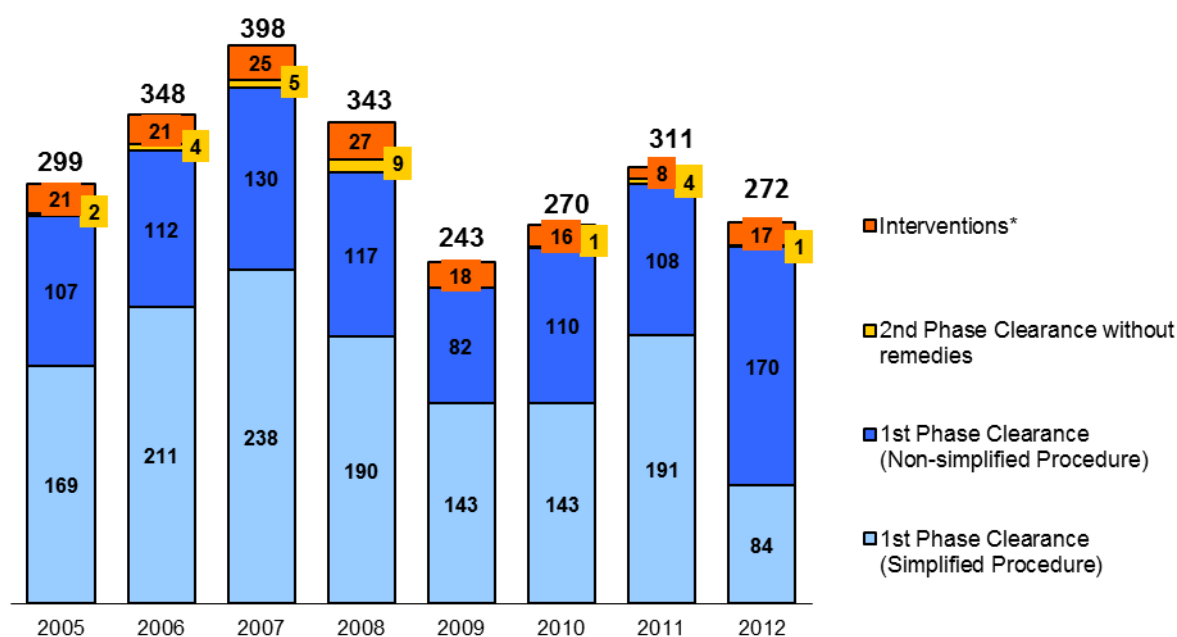
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<sup>35</sup> Cases COMP/M.6410 *UTC/Goodrich*, decision of 26.7.2012 and COMP/M.6381 *Google/Motorola*, decision of 13.2.2012

<sup>36</sup> Case COMP/M.6126 *Deutsche Börse/NYSE Euronext*, decision of 1.2.2012

<sup>37</sup> Cases COMP/M.6266 *J&J/Synthes*, decision of 18.4.2012; COMP/M.6286 *Südzucker/ED&F MAN*, decision of 16.5.2012; COMP/M.6410 *UTC/Goodrich*, decision of 26.7.2012; COMP/M.6458 *Universal Music Group/EMI Music*, decision of 21.9.2012; COMP/M.6471 *Outokumpu/Inoxum*, decision of 7.11.2012 and COMP/M.6497 *Hutchison 3G Austria/Orange Austria*, decision of 12.12.2012

## Merger decisions



\* Includes one prohibition in 2007

Source: Directorate-General for Competition

### 3. Simplifying merger procedures further

In order to increase efficiency when dealing with unproblematic cases and to make the notification system more business friendly, a simplification exercise was launched in 2012, in particular with respect to transactions that clearly pose no problems to competition. While the current procedures, which also entail referring cases from EU countries to the Commission, work well, there is scope for making them smoother and shorter.

### 4. Significant judgments by the EU Courts in merger control

In *Electrabel*<sup>38</sup>, the General Court fully dismissed Electrabel's appeal of a Commission decision of June 2009 fining it EUR 20 million for acquiring control over Compagnie Nationale du Rhône without prior approval under the EU Merger Regulation. This was the first time that an EU court rules on a Commission decision to impose a fine for implementing a concentration of EU dimension without prior notification to and approval by the Commission. The GC confirmed that such early implementation constitutes a serious breach of EU merger control law. The Court also makes clear that the Commission is entitled to adopt effective and deterrent sanctions in case of such infringements.

In *Editions Odile Jacob* and *Agrofert*<sup>39</sup>, the Court of Justice ruled on appeals by the Commission against two judgments of the General Court that had annulled a Commission decision refusing access to documents related to two merger cases. The ECJ confirmed that it is necessary to ensure a coherent application of the Transparency Regulation 1049/2001 with other rules of EU Law, in particular regulations designed to ensure respect for professional secrecy. The ECJ held in particular that the Commission can rely on the general presumption

<sup>38</sup> Case T-332/09, judgment of 12 December 2012

<sup>39</sup> Cases C-404/10 P and C-477/10 P, judgments of 28 June 2012

that disclosure of the correspondence between the Commission and the parties to merger procedures would undermine the protection of the commercial interests of the parties and the purpose of the Commission's merger investigations, in order to refuse access to such correspondence even after the closure of proceedings.

## **II. SECTORAL OVERVIEW**

This section provides an overview of policy developments and enforcement actions in a number of selected sectors on which the Commission particularly focused in 2012: energy and environment, ICT and media, financial services, manufacturing, the agri-food industry, pharmaceutical and health services, and transport.

### **1. Energy & Environment**

#### **Overview of key challenges in the sector**

This past year was a year in which governments and industry worldwide started a complex adjustment process in the wake of momentous events affecting the energy and environment sector in 2011, such as the Fukushima nuclear disaster in Japan. Coupled with the long-term trend of rising fuel prices and the high cost of renewable energy, those events added to the challenges faced by Member States to meet the Europe 2020 Strategy and the EU energy policy objectives. The strengthening and building of partnerships with the EU's key partners is also of strategic interest for secure, safe, sustainable and competitive energy. International cooperation with industrialised and fast growing economies is necessary to maintain Europe's position in energy research and innovation.

#### **The three pillars of the EU energy policy: competitiveness, sustainability and security of supply**

The EU Energy policy is built around three pillars: sustainability, security of supply and competitiveness. Reducing greenhouse gas emissions is vital to combating climate change. European consumers depend heavily on the secure and reliable provision of energy at competitive prices. Interconnection between European gas and electricity grids need to be substantially improved. The Commission's Communication "Energy 2020 - A strategy for competitive, sustainable and secure energy" Communication calls for action in areas where new challenges are emerging. These areas are energy efficiency, infrastructure, choice and security for consumers, energy technology and the external dimension of the internal energy market. Competition enforcement and advocacy, along with sector-specific legislative proposals, constitute the main tools the Commission has at its disposal to achieve these goals and create a single European energy market by the 2020 target date. Given the strategic importance of the energy sector, the European Parliament, in its Resolution on the 2011 report on competition policy (the Sánchez Presedo report) continued to request that the Commission actively monitors the degree of competition on the market.

EU Competition policy in the energy field aims to ensure a secure flow of energy, in particular electricity and gas, at competitive prices to EU households and businesses. An open and competitive single EU energy market will also guarantee secure provision of energy in the future by sending the necessary signals for investment and making the European market attractive to external suppliers. Such a market should also be open to new energy mixes and play a major role in developing and deploying new environmentally friendly technologies. Prices that reflect costs will help encourage energy efficiency, whilst supporting sustainability and security of supply. However, we are not there yet. The energy services (both gas and electricity) performed below the average in the most recent Consumer Markets Scoreboard,

with electricity supply being the 5th worst assessed services market (out of 30)<sup>40</sup>. Both markets have particularly poor scores on choice, comparability and switching suppliers and tariffs, suggesting that consumers do not actively participate in the market and are not making full use of the saving opportunities created by market liberalisation. The Commission's action in the area of competition policy is therefore consistent with and supports the Commission's legislative action to integrate the Single Market in electricity and gas (see the Commission's Communication "Making the internal energy market work").

## **Contribution of EU competition policy in tackling the challenges**

### *Enhancing competitiveness across the energy sector*

Competition enforcement and advocacy in the field of energy and the environment contribute to the competitiveness of EU industry and the integration of the internal market by opening markets, creating a level playing field between competitors, preventing incumbents from reinforcing their dominant positions, inducing economic restructuring and creating a framework for investment that avoids distortions and ensures the efficient allocation of resources in the Single Market.

Examples of enforcement actions by the Commission in 2012 underpinning those strategic objectives include an investigation into the conduct of power exchanges<sup>41</sup>, the opening of formal proceedings to investigate whether Bulgarian Energy Holding may be abusing its dominant market position in the wholesale electricity market in Bulgaria<sup>42</sup>, the opening of formal proceedings against the Romanian power exchange Opcom with respect to a suspected abuse of dominance in discriminating against non-Romanian traders<sup>43</sup> and the decision to make binding commitments that reduce the product scope and duration of a non-compete obligation in the sector for nuclear technology (Siemens and Areva<sup>44</sup>). The Commission also fined three European producers of water management products<sup>45</sup> for price coordination in an infringement which lasted from June 2006 to May 2008. Water management products are used in heating, cooling and sanitation systems and comprise pressurisation systems and products for quality assurance. The Commission used the settlement procedure to deal effectively with this case which was concluded on 27 June 2012 with the adoption of a prohibition decision on 27 June 2012 against three undertakings, which were fined a total of EUR 13.6 million.

Moreover, the Commission actively monitored the implementation of remedies in several previous antitrust cases, all aimed at opening up national markets and preventing incumbents from abusing their dominant position in several Member States. The monitoring included the implementation of measures that would remedy competition concerns in the form of foreclosure (ENI<sup>46</sup>, E.ON gas<sup>47</sup> and GDF<sup>48</sup>), customer tying through long-term contracts for

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<sup>40</sup> 8th Consumer Markets Scoreboard, 2012, Commission, DG SANCO, [http://ec.europa.eu/consumers/consumer\\_research/editions/cms8\\_en.htm](http://ec.europa.eu/consumers/consumer_research/editions/cms8_en.htm)

<sup>41</sup> Case COMP/39952 *Power exchanges*, see MEMO/12/78 of 7.2.2012

<sup>42</sup> Case COMP/39767 *BEH electricity*, IP/12/1307 of 3.12.2012

<sup>43</sup> Case COMP/39984 *Romanian power exchange*, IP/12/1355 of 11.12.2012

<sup>44</sup> Case COMP/39736 *Siemens/Areva* decision of 18.6.2012

<sup>45</sup> Case COMP/39611 *Water management products*, press release of 27.6.2012, IP/12/704

<sup>46</sup> Case COMP/39315 *ENI*, decision of 29 September 2010, OJ C352, 23.12.2010, p. 8-10, IP/10/1197

<sup>47</sup> Case COMP/39317 *E.ON gas foreclosure*, decision of 4 May 2010, OJ C278, 15.10.2010, p. 9-10, IP/10/494

<sup>48</sup> Case COMP/39316 *GDF foreclosure*, decision of 3 December 2009, OJ C57, 9.3.2010, p. 13-14, IP/09/1872

large electricity customers (EDF in France<sup>49</sup>) as well as restrictions on export capacity (SVK<sup>50</sup> in Sweden).

The EU merger rules seek to ensure that mergers harmful to the competitive process are altered so that these effects do not occur or are avoided all together whilst allowing beneficial restructuring. During 2012, the Commission was able to approve a number of mergers, including mergers connected to restructuring of gas and electricity networks<sup>51</sup> induced by liberalisation, as well as mergers linked to renewable energy sources<sup>52</sup>. While the Commission did not have to intervene in new mergers that would have anti-competitive effects in 2012, it devoted considerable efforts to defending the EU's interests before the General Court<sup>53</sup> and in ensuring that commitments to avoid harmful effects made in earlier merger cases by companies, such as EDF and GDF Suez<sup>54</sup>, were effectively complied with and enforced. Strict post-decision enforcement is critical as, otherwise, the anti-competitive effects that the earlier decisions sought to avoid could nevertheless materialise.

Using its powers in the State aid field to preserve the integrity of the Single Market by controlling whether Member States use their public resources in a non-distortive manner, the Commission undertook enforcement action and adopted new rules in the field of energy and the environment. For example, the Commission opened a formal investigation on potential State aid in Romania in the form of privileged tariffs granted by the main electricity supplier to a range of companies<sup>55</sup> and gave conditional approval to the aid component in regulated electricity tariffs in France<sup>56</sup>. The Commission also adopted rules on national support for industry electricity costs in the context of the EU Emission Trading Scheme<sup>57</sup>.

#### *Contributing to sustainability*

Sustainable development is the long term use of resources to meet human needs for energy, while preserving the environment. Sustainability was at the heart of the measures reviewed under the State aid rules under which the Commission authorised aid that supports renewable energy sources and environmentally friendly businesses. This is justified on the reasoning that State aid can correct market failures caused by so-called negative externalities, i.e. situations where environmental costs for society are not yet reflected in the production costs borne by companies.

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<sup>49</sup> Case COMP/39386 *Long term electricity contracts in France*, decision of 17 March 2010, OJ C133, 22.5.2010, p. 5-6, IP/10/290

<sup>50</sup> Case COMP/39351 *Swedish Interconnectors*, decision of 14 April 2010, OJ C142, 1.6.2010, p. 28-29

<sup>51</sup> Such as M.6591 *Tennet offshore GMBH / Mitsubishi Corporation / Tenet Offshore 2*, M.6698 *Cheung Kong Holdings / Cheung Kong Infrastructure Holdings / Power Assets Holdings / MGN Gas Networks UK* and M.6508 *GIP / Fluxys G / Fluxys Switzerland*

<sup>52</sup> Such as M.6669 *CDC Infrastructure / Foresight Solar / Adenium Solar / VEI Capital / FOR VEI*, M.6679 *Steag / Fronterasol / OHL Industrial / Arenales Solar* and M.6540 *Dong Energy Borkum Riffgrund I Holdco / Boston Holding / Borkum Riffgrund I Offshore Windpark*

<sup>53</sup> Cases T-389/12 and T-389/12 R *EDF v European Commission*

<sup>54</sup> Such as the remedies accepted in M.5224 *EDF / BE*, M.5549 *EDF / Segebel* and M.5978 *GDF Suez / International Power*. Related cases were M.6422 *Tokyo Gas / Siemens / Tessenderlo Chemie / International Power / GDF Suez / T-Power JV* and M.6414 *ITOCHU / Tessenderlo Chemie / Siemens Project Ventures / T-Power JV*

<sup>55</sup> Cases SA.33451, SA.33475 and SA.33581 (12/C) *Alleged preferential tariffs in contracts of Hidroelectrica SA with electricity traders, Alleged preferential purchase tariffs of Hidroelectrica SA – thermo, Alleged preferential tariffs in contracts of Hidroelectrica SA with industrial producers*, decisions of 25 April 2012, OJ C328, publication pending

<sup>56</sup> Case SA.21918 (C17/2007) *Tarifs réglementés de l'électricité en France*, decision of 12 June 2012

<sup>57</sup> *Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012*, decision of 22 May 2012, OJ C154, 5.6.2012, p. 4

State support for renewable energy remains one of the key drivers for its deployment, based on the horizontal rules set out in the Environmental Aid Guidelines<sup>58</sup>. One set of cases concerned energy from renewable sources (e.g. in Ireland<sup>59</sup>, the Netherlands<sup>60</sup>, Austria<sup>61</sup>, the UK<sup>62</sup> and France<sup>63</sup>). Other cases relate to the upgrading of existing energy infrastructure to higher environmental standards (e.g. in Greece<sup>64</sup> and Poland<sup>65</sup>) and the use of environmentally friendly transport vehicles (UK<sup>66</sup>) and waste treatment (UK<sup>67</sup>). Work on the revision of the Environmental Aid Guidelines started in 2012, aiming both at taking stock of the experience of subsidising a range of technologies and at taking account of market developments.

The Commission also approved State aid for the modernisation of electricity generation installations in Cyprus, Estonia, Hungary, the Czech Republic and Romania based on the regime established by Article 10c of the EU Emission Trading Directive<sup>68</sup>. Those Member States will be allowed to grant emission trading allowances free of charge with a view to promoting competition and increasing security of supply. Several other Member States are expected to come forward with similar plans.

#### *Contributing to security of supply*

The EU energy sector is characterised by a high dependency on imports, as the EU produces only 48% of its energy needs<sup>69</sup>. Energy dependency differs greatly among Member States. Denmark appears to be the only net energy exporter within the EU27, while the Baltic countries rely on a single source for their gas imports. The EU energy sector is also characterized by a significant need for investments, e.g. in electricity generation infrastructure, given the trend for gas and renewables to contribute more to electricity generation in the EU.

The Commission's antitrust enforcement action in the energy sector can contribute to resolving security of supply issues by facilitating access to the market and encouraging investment. In 2012, the Commission continued its investigation of a possible abuse of dominance on the Czech electricity market through the hindrance of the entry of competitors and assessed commitments from ČEZ in the form of the divestment of lignite fired power

<sup>58</sup> *Community guidelines on State aid for environmental protection*, OJ C82, 1.4.2008, p. 1-33

<sup>59</sup> Case SA.31236 *Renewable feed In tariff*, decision of 12 January 2012

<sup>60</sup> Case SA.34411 *SDE +*, decision of 7 September 2012

<sup>61</sup> Cases SA.33384 *Green Electricity Act 2012, Austria*, decision of 8 February 2012; SA.32531 *Environmental aid in Austria*, decision of 21 March 2012

<sup>62</sup> Case SA.34140 *Renewable Heat Initiative (Northern Ireland)*, decision of 12 June 2012

<sup>63</sup> Case SA.33915 *Régime cadre d'aides en faveur de la protection de l'environnement*, decision of 7 June 2012

<sup>64</sup> Cases SA.34642 *Expansion & modernization of Kozani's district heating infrastructure*, decision of 10 September 2012; SA.33621 *District heating network infrastructure of Florina*, decision of 10 September 2012 and SA.33405 *Expansion of district heating network infrastructure of Amyntaio area*, decision of 10 September 2012

<sup>65</sup> Cases SA.34472 *Aid for modernisation of heating distribution networks in Poland*, decision of 10 September 2012; SA.34471 *Aid for modernisation and replacement of electricity distribution networks in Poland*, decision of 10 September 2012; SA.32832 *Aid for modernizing the heat network in Dębica*, decision of 23 January 2012; SA.32831 *Aid for modernising the district heating network in Ropczyce*, decision of 23 January 2012; SA.32830 *Aid for modernizing the heat network in Krosno*, decision of 4 February 2012 and SA.32757 *Individual aid for the modernisation of the district heating network in Jaslo*, decision of 23 January 2012

<sup>66</sup> Case SA.34375 *Aid to purchase of ultra-low emission vehicle, amendment to include vans*, decision of 22 June 2012

<sup>67</sup> Case SA.34051 *Hull Energy Works*, decision of 19 September 2012

<sup>68</sup> Directive 2003/87/EC as amended by Directive 2009/29/EC. During 2012 Poland, Lithuania and Bulgaria pre-notified similar modernisation plans

<sup>69</sup> Market Observatory for Energy, June 2011

plants. The Commission also opened proceedings against Gazprom<sup>70</sup> in Russia to investigate whether it abused its dominant market position in upstream gas supply markets in central and eastern European Member States by partitioning market, preventing diversification of supply of gas and/or imposing unfair prices on its customers by linking the price of gas to oil prices.

## **2. Information and Communication Technologies (ICT) and Media**

### **Overview of key challenges in the sector**

As recognised in the Digital Agenda for Europe (the "Digital Agenda")<sup>71</sup> and the Communication on e-commerce and other online services (the "E-commerce Communication")<sup>72</sup>, Information and Communication Technologies ("ICT") play a key enabling role for Europe to achieve its strategic objectives under the Europe 2020 Strategy and, in particular, the objectives under the Digital Agenda flagship initiative. Creative content is also an essential input into the digital economy and a key driver of consumer demand for digital services. There is a very considerable growth potential in these sectors. In mature economies, internet related expenditure and consumption accounted for 21% of GDP growth during the past five years<sup>73</sup>.

Furthermore, in light of the rapid technological developments which characterise these sectors, effective competition policy and enforcement are essential to address potential malfunctioning in the ICT and media sectors.

Competition policy also plays an important role in shaping the Commission's legislative proposals in the media sector such as the July 2012 proposal for the Directive on collective rights management. The proposal's objective is to improve transparency and governance of collecting societies as well as facilitate multi-territorial licensing of the rights managed by collecting societies and consequently improve access to online music. In light of the Commission's enforcement experience in competition cases, the proposal contains a number of important competition law safeguards aimed at ensuring compliance with competition law in the collective management of copyright.

### **Contribution of EU competition policy in tackling the challenges**

State aid policy is of growing importance in the ICT and media field. After the public consultation on an issues paper in 2011 to prepare the review of the rules for State aid to films and other audiovisual works<sup>74</sup>, a new draft Cinema Communication was published for consultation on 14 March. 2012. The review of the Broadband Guidelines<sup>75</sup>, which also started with the release of an issues paper in 2011, was pursued with the publication of draft Guidelines on 1 June 2012. Around 100 comments received from stakeholders were published

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<sup>70</sup> Case COMP/39816, *Upstream Gas Supplies in Central and Eastern Europe*, opening of proceedings on 31 August 2012

<sup>71</sup> *A Digital Agenda for Europe*, COM(2010) 245 final/2

<sup>72</sup> *A coherent framework for building trust in the Digital Single Market for e-commerce and online services*, COM (2011) 942 final

<sup>73</sup> McKinsey Global Institute, "Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity" (May 2011) as quoted in an Issues Note on the Digital Economy by the OECD Secretariat (Competition Committee) (DAF/COMP(2011)16)

<sup>74</sup> Commission communication on certain legal aspects relating to cinematographic and other audiovisual works (Cinema Communication) of 26 September 2001, OJ C43, 16.2.2002, p. 6

<sup>75</sup> Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ C235, 30.9.2009, p. 7

on DG COMP's website in October 2012. The new Guidelines, which mainly refine the previous guidelines, were adopted on 19 December 2012 and align the rules in this area with the targets of the Digital Agenda and accommodate changes in technology.

The Commission has continued to use its enforcement tools to ensure unrestricted competition and growth in the ICT and media sectors to the benefit of consumers and to support the Commission's broader Digital Agenda goals. In this context, State aid has an important role to play in accelerating the deployment of broadband networks in Europe. Pro-competitive aid measures, which complement private investments in areas which are not profitable on commercial terms, are necessary to achieve the objectives of the Digital Agenda. The volume of State aid approved by the Commission in 21 decisions under the Broadband Guidelines in 2012 amounted to EUR 6.555 billion in 2012. This is a steep increase compared with the EUR 1.8 billion budgets approved in 2011 and 2010, notably because more Member States notify framework schemes with correspondingly higher budgets.

#### *Enforcement action against incumbent telecommunications operators*

In May 2012, the Commission sent a statement of objections to Slovak Telekom and to its parent company, Deutsche Telekom, in which the Commission took the preliminary view that Slovak Telekom may have abused its dominant position on several wholesale broadband markets in Slovakia since May 2004. In particular, Slovak Telekom may have refused to supply unbundled access to its local loops and wholesale services to competitors, and may have imposed a margin squeeze on alternative operators (Slovak Telekom itself would have operated at a loss if its own wholesale prices had applied to it. The Commission also considered on a preliminary basis that Deutsche Telekom may be held liable for the conduct, because of the nature and degree of its links with its subsidiary Slovak Telekom, in which it owns a majority stake of 51%.

The Commission is also examining the observations received on the statement of objections sent to Telefónica and to Portugal Telecom in October 2011, regarding their agreement not to compete on the Iberian telecommunications markets, expressing the preliminary view that this agreement breaches Article 101 TFEU. This is the first case in the sector concerning a cross-border market-sharing agreement, which is of particular importance to avoid that the Single Market continues to be artificially compartmentalised along national borders<sup>76</sup>.

#### **Ongoing enforcement in the market for internet search and advertising (Google) as well as injunctions based on standard essential patents (Samsung)**

Another case involving an alleged abuse of a dominant position concerns Google. The Commission has expressed concerns that four types of Google business practices may constitute an abuse of a dominant position within the meaning of Article 102 TFEU, namely: (i) the way in which Google's vertical search services are displayed within general search results as compared to services of competitors; (ii) the way Google may use and display third party content on its vertical search services; (iii) exclusivity agreements for the delivery of Google search advertisements on other websites; and (iv) restrictions in the portability of AdWords advertising campaigns. Google submitted a detailed commitment text at the end of January 2013. The Commission's services are currently analysing Google's proposal with a view to deciding whether it would allow the Commission to commence the process for the adoption of a decision pursuant to Article 9 of Regulation 1/2003.

It also opened three proceedings<sup>77</sup> concerning possible abuses by Samsung and Motorola of their standard essential patents, partly in order to provide more clarity in this field where the Commission received numerous complaints during the year. On 21 December 2012, in respect of one of those three proceedings, the Commission

<sup>76</sup> On 23 January 2013 the Commission fined Telefónica and Portugal Telecom EUR 79 million in this case, which falls within the scope of next year's Annual Competition Report

<sup>77</sup> Initiation of proceedings against Samsung on 30 January 2012 (Case COMP/C-3/39.939); initiation of proceedings against Motorola on 2 April 2012 (Cases COMP/C-3/39.985 and COMP/C-3/39.986)



sent a Statement of Objections to Samsung, informing it of the Commission's preliminary view that Samsung's seeking of injunctions against Apple in various Member States on the basis of its mobile phone standard-essential patents amounts to an abuse of a dominant position<sup>78</sup>.

### *Enforcement linked to digitisation*

The Commission has also pursued several actions focusing on the impact of the transition to digital networks on content sectors.

To ensure that the transition from analogue to digital terrestrial broadcasting and that the resulting digital dividend lead to new entry and broader viewer choice, EU law<sup>79</sup> requires that such dividend is allocated subject to specific conditions (e.g. open, transparent and non-discriminatory procedures). Following intervention by the Commission, France assigned frequencies to new operators in 2012, Bulgaria took legislative steps to address the breaches and Italy took steps with a view to assigning new digital frequencies (multiplexes) in 2013.

On 12 December 2012, the Commission also adopted a commitment decision in the e-books sector, another nascent and fast-moving part of the digital economy, that rendered legally binding commitments offered by Apple and four international e-book publishers: Simon & Schuster (CBS Corp.), Harper Collins (News Corp.), Hachette Livre (Lagardère Publishing) and Verlagsgruppe Georg von Holtzbrinck (owner of inter alia Macmillan).

The Commission had opened proceedings in December 2011 against these companies, as well as a fifth international e-book publisher, Penguin (Pearson Group). While the December 2012 decision was not addressed to Penguin as that publisher chose not to offer commitments to the Commission, the Commission is currently engaged in constructive discussions with Penguin on commitments that would allow an early closure of proceedings also against that publisher.

Furthermore, following the *Premier League* judgment<sup>80</sup>, the Commission conducted a fact-finding investigation to examine whether licensing agreements for premium pay-TV content contain absolute territorial protection clauses which may restrict competition, hinder the completion of the Single Market and prevent consumers from cross-border access to premium sports and film content.

### *ICT in the context of the Merger Regulation*

Finally, through the Merger Regulation, the Commission ensures that the ICT and media sectors remain competitive and open for new entrants, and that access to key elements (whether content, technology or interconnection) is not denied. The Commission also aims at ensuring that consumers do not suffer from higher prices, less choice, poorer quality and limited innovation as a result of mergers in that sector.

One example of the Commission taking action under the Merger Regulation to preserve competitiveness and consumer choice in the music sector is the Commission's conditional clearance decision of the proposed acquisition by *Universal Music* of *EMI*'s recorded music assets. The proposed transaction, as originally notified, would have increased Universal's size in a way that would likely have enabled it to impose higher prices and more onerous licensing terms on digital music providers. This, in turn, would have negatively affected the possibilities for innovative providers to expand or launch new music offerings and would

<sup>78</sup> See press release at [http://europa.eu/rapid/press-release\\_IP-12-1448\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1448_en.htm)

<sup>79</sup> Including Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L249, p. 21-26)

<sup>80</sup> Joined Cases C-403/08 and C-429/08, judgment of 4 October 2011

ultimately have reduced consumers' choice for digital music, as well as cultural diversity. To remove the Commission's concerns, Universal committed to divest significant assets, corresponding to around two thirds of EMI's revenues in the EEA, and including eight of the ten EMI top selling artists. Moreover, the commitments provide that at least two thirds of the divested assets will have to be sold to a single purchaser, which will have to have the ability and the resources to operate in the market as a credible competitor. This case also shows that the Commission's merger control activity continued to contribute to the maintenance of market conditions supportive of innovation.

Another example of the Commission intervening under the Merger Regulation to ensure that a proposed merger would not have a negative impact on end consumers in terms of higher prices is the Commission's conditional clearance decision on 12 December of *Hutchison's* proposed acquisition of *Orange* in Austria. The proposed transaction would have led to a four to three consolidation on the Austrian mobile telecommunications market. The Commission found that the merger of two mobile network operators, such as Hutchison and Orange, with a particular strength on the data segments, which are of particular importance for the future telecoms markets, on a market with high barriers to entry and absence of buyer power would have led to a significant price increase for end customers of mobile telecommunication services. To address these concerns, the parties submitted commitments, including a wholesale access remedy to improve access possibilities for mobile virtual network operators. The parties also offered the divestiture of spectrum, which, together with spectrum reserved for new entrants by the Austrian regulator in the upcoming auction in 2013, creates the possibility for new mobile network operators to enter the Austrian market.

### **3. Financial Services**

#### **Overview of key challenges in the sector**

Financial services play an essential role in the economy in transforming short-term savings into long-term lending and directing capital where it is most needed. In 2012, the instability and difficulties in the financial sector continued.

In 2012 the European Institutions took initiatives to deepen the Single Market in financial services by strengthening the EU financial sector (in line with the EU commitments under the G-20) and the European surveillance of the financial system and public finances.

In December 2012, the European Council agreed on a roadmap for the completion of the Economic and Monetary Union, based on deeper integration and reinforced solidarity<sup>81</sup>. This process will begin with the completion, strengthening and implementation of the new enhanced economic governance, as well as – in relation to the Banking Union - the adoption of the Single Supervisory Mechanism and of the new rules on recovery and resolution and on deposit guarantees. It will be completed by the establishment of a single resolution mechanism.

The arrangements related to banking, would allow direct recapitalisation by the European Supervisory Mechanism of individual banks which would break the vicious circle of contagion between banks and their sovereign. Since such measures need to comply with the State aid rules, the European Commission will continue to play a crucial role in the context of the envisaged Banking Union.

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<sup>81</sup> See Conclusions of the European Council held on 13-14 December (EUCO 205/12)

## Contribution of EU Competition Policy in tackling the challenges

Antitrust enforcement contributes to the well-functioning of financial markets with incentives for market participants to improve efficiency and meet consumer needs. Combined with well-designed regulation, antitrust enforcement should enhance transparency and reduce entry barriers for new technology and new players.

### *Action in the area of financial derivatives*

The European Commission pursued two antitrust investigations in the credit default swaps (CDS) market<sup>82</sup> which were opened in 2011. The Commission continued to analyse, in particular, the cooperation between a number of leading investment banks and an information service provider. The purpose of the investigation is to establish whether those players acted to preserve their stronghold in the profitable Over-The-Counter (OTC) CDS market by hindering the development of alternative CDS trading platforms in a way which infringed EU competition law.

#### **Action to ensure fair access to financial information**

Access to reliable *information* is crucial for the financial markets. On 20 December 2012 the Commission adopted a decision that renders legally binding the commitments offered by *Thomson Reuters* to create a new licence allowing customers, for a monthly fee, to use Reuters Instrument Codes (RICs) for data sourced from Thomson Reuters' competitors. RICs are codes that identify securities and are used by financial institutions to retrieve data from Thomson Reuters' real-time datafeeds. To correctly assess investment opportunities, market participants need to access accurate and timely financial data, for example, through consolidated real-time datafeeds. The Commission had concerns that Thomson Reuters might have been abusing its dominant position in the market for such datafeeds. The decision was preceded by several rounds of commitments offered by Thomson Reuters and two market tests. In order to correctly assess investment opportunities, market participants need to access accurate and timely financial data, for example through consolidated real-time datafeeds. The commitments offered by Thomson Reuters and rendered legally binding by the Commission's decision will enhance competition in this market. Financial institutions that use RICs will be able to switch to alternative providers more easily.

### *Contributing to seamless, efficient and innovative payment markets*

Payment markets are essential for the Single Market. Regulation, self-regulation and competition enforcement must work together to create open, efficient and innovative market structures. In 2012, there have been significant advances in all three areas.

In terms of regulation, the Single Euro Payment Area (SEPA) End Date Regulation<sup>83</sup> was adopted in February. This obliges all users to move from the previous national credit transfer and direct debit systems to the new SEPA systems established by the European Payments Council by 2014. From a competition perspective, the key element in this regulation is that it provides legal clarity on interchange fees for direct debit. This had been a point of much discussion with the banking sector for several years, and the regulation specified that interchange fees for cross-border transactions are prohibited from November 2012 and for domestic transactions from 2017. In January 2012, a Green Paper on cards, internet and mobile payments was published. It addressed issues such as lack of market access, diverging interchange fees, barriers to cross-border acceptance of card payments, lack of transparency, lack of European technical and security standards and governance of the SEPA process. 300 replies were received and published in June. In October, the Commission announced that in the second quarter of 2013 it would propose a revision of the regulatory framework (in

<sup>82</sup> Press Release of 29.4.2011, IP/11/509

<sup>83</sup> Regulation 260/2012

particular the Payment Services Directive) and would propose to regulate multilateral interchange fees (MIFs) for payment card transactions.

In payments self-regulation has played an important role, particularly with the creation of the European Payments Council, which consists of credit and payment institutions, following the introduction of the euro. The SEPA Council was created to represent all stakeholders, but the roles and decision making powers of the EPC and SEPA Council remain controversial. In the SEPA Regulation the Parliament required a review of the governance arrangements. This was included in the Green Paper and it has been much discussed during 2012, including from a competition perspective.

In terms of competition enforcement, in May 2012 the General Court fully upheld<sup>84</sup> the Commission's decision which had found that MasterCard's MIFs for card payments constituted a restriction of Article 101(1) TFEU and that MasterCard had not demonstrated that the MIFs were justified on efficiency grounds under Article 101(3). In July, the Commission issued a supplementary statement of objections to Visa<sup>85</sup> concerning its MIFs for credit card payments and the limitations it imposed on cross-border acquiring where merchants use banks in other countries to benefit from better conditions and in particular lower MIFs. Investigation of the EPC work on standardisation for e-payment systems continued. The EPC announced in July 2012 that it would stop its work on the e-Payments Framework.

#### *Antitrust investigations in the financial sector*

In October 2011, the Commission undertook unannounced inspections at the premises of a number of companies active in the sector of interest-rate derivative products linked to the Euro Interbank Offered Rate (EURIBOR) in a number of Member States, as it had concerns that these companies may have violated EU antitrust rules. The Commission started investigating these cases as a matter of top priority before the so-called "LIBOR scandal" triggered by Barclays on the LIBOR/EURIBOR rate manipulation by a number of banks and their employees.

In 2012, the Commission continued to investigate a number of cases related to the benchmark rates of LIBOR, EURIBOR, TIBOR – the Tokyo rate – and with regard to a number of banks and brokers. The alleged rate-rigging is a major competition concern as it has to be ensured that competition in financial markets takes place on a level-playing field.

Interbank interest rate benchmarks are systemic benchmarks which are important for the transmission of the euro area's monetary policy. Besides, the integrity of these benchmarks is critical to the pricing of many financial instruments such as interest rate derivatives, commercial and non-commercial contracts. Any failures may cause losses for investors, distort the real economy and undermine market confidence. The importance of financial derivatives, in particular, is immense. In 2011, interest-rate derivatives had a gross value of many trillions of euros. The products are traded every day on a global basis, involving companies such as banks, pension funds and industrial firms seeking to hedge their exposure. They play a key role in the management of risk in our economy.

These are cases that are dealt with worldwide (US, Canada, Australia, South Korea, Switzerland, Japan, Brazil, etc.) and on the antitrust, criminal and regulatory law fronts.

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<sup>84</sup> Case T-111/08 *MasterCard Inc. and Others v Commission*, Judgment of the General Court of 24 May 2012

<sup>85</sup> Press release of 31.7.2012, IP/12/871

### **Taking action to ensure competitive prices to hedge against investment risk**

On 1 February 2012, the Commission prohibited the proposed merger between Deutsche Börse (DB) and New York Stock Exchange Euronext (NYX). The transaction was unproblematic in a broad range of markets, including the markets for listing, trading and clearing of cash instruments. However, it would have eliminated competition and lead to a quasi-monopoly in some derivatives markets, in particular, European single stock and equity index derivatives and European interest rate derivatives, where globally DB and NYX are *de facto* the only credible players. The markets for exchange trading and clearing of these derivative instruments is characterized by high barriers to entry resulting, in particular, from the closed vertical silo operated by most derivatives exchanges. While the transaction would have given rise to certain efficiencies, it was considered that these would be insufficient to outweigh the significant harm stemming from the creation of a *de facto* monopoly, namely the loss of actual and potential competition between DB and NYX. The Commission therefore found that the merger was likely to lead to higher prices and less innovation for derivatives customers and that the remedies proposed by DB and NYX were insufficient to address these concerns.

In September 2012, the Commission approved, following an in-depth investigation, a joint venture between three large UK mobile telephone operators<sup>86</sup>. The joint venture will, in particular, develop a mobile commerce platform including a mobile wallet for payments. The investigation revealed that a number of alternatives for mobile payments already existed and that the joint venture was unlikely to hinder the emergence of others in the near future. The joint venture was therefore cleared without conditions.

### **Resolving the situation of banks that cannot become viable without continuing taxpayer support**

In 2012, the extraordinary State aid crisis rules had to be prolonged due to the continuing uncertainties in financial markets. With those rules, State aid control continued to ensure a consistent policy response to the financial crisis throughout the EU and played an important role in limiting distortions of competition in the internal market.

As has been the case throughout the financial crisis, the Commission in 2012 adopted a considerable number of decisions on individual banks in 2012. For example in the case of *Dexia* on 28 December the Commission approved a resolution plan for Dexia submitted on 28 December 2012 by the French, Belgian and Luxembourgish authorities. Under the plan, as endorsed in the Commission decision, the Luxembourg part was sold and the Belgian lending activities were taken over by Belgium and will be continued as the newly created and restructured retail lender *Belfius*. The French business is to be wound down with the exception of the lending activities to municipalities and hospitals, which will be continued through a development bank. In the case of *BayernLB* the Commission approved a plan based on a substantially changed business model and a reduction of assets by 50%. The Commission also required the bank to pay back EUR 5 billion of the rescue aid received earlier, which exceeded the minimum amount required for the restructuring.

In a number of Member States, the Commission authorised the prolongation of existing bank guarantee and recapitalisation schemes. Moreover, the Commission always verified that aid (under schemes or granted on an individual basis) was limited to the minimum necessary and that moral hazard was properly addressed by ensuring that shareholders and subordinated debt holders were not bailed out through such state interventions.

### *The specific situation of Programme Countries*

Extensive financial sector conditionality was included among the policy requirements addressed to the Member States that have received international financial assistance, i.e. the so-called Programme Countries. In that context, DG Competition continued to collaborate with DG ECFIN, the IMF and the ECB regarding the financial sector in programme countries in order to ensure that the massive support necessary to keep a number of such institutions alive in a difficult macro-economic environment will not result in undue distortions of

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<sup>86</sup> Case COMP/M.6314 — Telefónica UK/Vodafone UK/Everything Everywhere/JV

competition. In addition to the existing programmes in Greece, Portugal and Ireland, a programme for the banking sector in Spain was adopted.

As regards Greece, following the 2011 write downs in the Private Sector Involvement the capital of the banks was seriously depleted. To fill the resulting capital needs, an increased budget of EUR 50 billion for aiding banks was agreed. EUR 18 billion of those funds was advanced to the four main Greek banks (*National Bank of Greece, Alpha Bank, Eurobank and Piraeus bank*) in May 2012. On 27 July 2012, the Commission temporarily approved the bridge recapitalisations while at the same time initiating formal investigation procedures. Moreover, in 2012, the consolidation of the Greek banking sector started to take shape. The *Agricultural Bank of Greece (ATE)* was resolved with a transfer of its good assets and deposits to Piraeus Bank and the previously French-owned banks *Emporiki* and *Geniki* were acquired by Alpha and Piraeus bank respectively.

In 2011, the banks in Ireland were recapitalised in the context of the EU/IMF Programme, and a number of actions to restore their viability were identified. In 2012, DG Competition continued to monitor the implementation by *Bank of Ireland* of its commitments as well as the progress of *Allied Irish Banks* and *Permanent TSB* to deleverage their balance sheets.

In 2011 the EU and the IMF agreed to a EUR 78 billion support package for Portugal. To strengthen confidence in the financial sector, the Programme requires banks to achieve high levels of capital. While *Banco Espírito Santo* managed to raise all the capital it needed from private investors, *Caixa Geral de Depósitos, Millennium BCP, Banco Português de Investimento* and *Banif* needed public support and their restructuring plans are currently being assessed by the Commission. In March 2012, a decision was taken regarding the restructuring aid granted to *Banco Português de Negócios*, which entailed its integration into *Banco BIC Português*.

In July 2012, the EU and the ECB concluded a Memorandum of Understanding for a sector programme for the banking sector in Spain. It made Spanish banks subject to a rigorous stress test over a three-year period. Banks with a capital shortfall that could not be met by mobilising private resources were recapitalised with programme funds and were subject to restructuring under State aid rules. Two groups of banks were involved in that process: the first group was composed of banks already controlled by the Spanish authorities: *BFA/Bankia, Catalunya Caixa, Nova Caixa Galicia* and *Banco de Valencia*, for which the restructuring plans were approved in November 2012. The second group was composed of other banks that needed State aid following the stress test: *Ceiss, Banco Mare Nostrum, Caja 3* and *Liberbank*. The restructuring plans of these banks were approved in December 2012.

Cyprus and the Cypriot banks lost access to international funding markets and requested external financial assistance in June 2012. The Cypriot banks faced significant capital shortfalls due to their large exposure to Greek sovereign and private sector debt and excess lending to the domestic real estate sector.

#### **4. Basic industries and Manufacturing**

##### **Overview of key challenges in the sector**

The EU and the Member States shall, in accordance with Article 173 TFEU, ensure that the conditions necessary for the competitiveness of the Union's industry exist. For that purpose, in accordance with a system of open and competitive markets, their actions shall be aimed at, among other things, speeding up the adjustment of industry to structural changes as well as

fostering better exploitation of the industrial potential of policies of innovation, research and technological development. The Treaty framework was given more shape in the Communication "An Integrated Industrial Policy for the Globalisation Era: Putting Competitiveness and Sustainability at Centre Stage" adopted by the Commission in October 2010. Industry accounts for four-fifths of Europe's exports and private sector R&D investment<sup>87</sup>.

### **Contribution of EU competition policy in tackling the challenges**

During 2012 EU competition policy was applied in the area of manufacturing and basic industry in line with the EU's industrial policy centred around competitiveness; for example, in the field of State aid, State aid rules were adopted which enable the Member States to support industrial sectors at significant risk of carbon leakage in the context of the third phase of the European Emission's System (ETS)<sup>88</sup>. The Commission's actions against cartels and abuses of dominant positions are particularly beneficial to European manufacturing and basic industries since such enforcement actions deters and sanctions anticompetitive conduct resulting in excessive input prices (see for example the Commission's fining decisions in the *Cathode ray tubes* cartel case<sup>89</sup> and the *Freight Forwarding* cartel<sup>90</sup>, which entailed surcharges for freight forwarding services by air along key trade lines between Europe and North American and Asian trade lines).

Such considerations also guide the Commission's assessment of mergers. On 7 November 2012, following an in-depth review, the Commission approved, subject to conditions, the Finnish firm *Outokumpu's* acquisition of *Inoxum*<sup>91</sup>, the stainless steel division of *ThyssenKrupp* of Germany. The approval is conditional upon the divestiture of *Inoxum's* stainless steel production facility in Terni, Italy. The Commission had concerns that the combination of the two largest suppliers of cold rolled steel products would have given the merged entity the power to raise prices. The commitments offered address those concerns. Stainless steel is a key material for a wide range of products, from household goods to industrial equipment, and an essential input for many European industries. The divestment of the Italian Terni plant ensures that the creation of a new European market leader will not be detrimental to consumers and businesses in Europe.

The Commission's in-depth investigation focused on the production of cold rolled stainless steel products in the European Economic Area (EEA). In that market, the merger will combine the first and the second largest supplier. The transaction, as initially notified, would have created a player three times as big as Aperam of Luxembourg and five times as big as Acerinox of Spain, the closest competitors, and respectively the third and fourth player in the market. The Commission's investigation found that while imports account for an appreciable part of the EEA market, they are insufficient to constrain price increases, because they are generally not considered fully substitutable by final customers. Moreover, despite their level of spare capacity, it is likely that the two main European competitors of the parties, Aperam and Acerinox, would have found it more profitable to follow price increases by the merged entity rather than competing sufficiently aggressively to prevent such increases. Price

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<sup>87</sup> Industrial Policy Communication Update of 10 October 2012 (COM(2012) 582 final)

<sup>88</sup> Press release of 22.5.2012, IP/12/498

<sup>89</sup> Case COMP/39437 *TV and computer monitor tubes*, press release of 5.12.2012, IP/12/1317

<sup>90</sup> Case COMP/39462 *Freight forwarding*, Summary of Commission Decision of 28 March 2012 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

<sup>91</sup> Case COMP/M.6471 *OUTOKUMPU / INOXUM*, press release of 7.11.2012, IP/12/1185

increases resulting from the transaction, as initially notified, would have likely been much higher than any potential synergies.

Two weeks after the Outokumpu decision, on 22 November 2012, the European Commission cleared under the EU Merger Regulation the proposed acquisition of *Xstrata*, the world's fifth largest metals and mining group, by *Glencore*<sup>92</sup>, the world's leading metals and thermal coal trader. The clearance was conditional on the termination of Glencore's off-take arrangements for zinc metal in the European Economic Area (EEA) with Nyrstar, the world's largest zinc metal producer, and the divestiture of Glencore's minority shareholding in Nyrstar. The Commission had concerns that the merged entity would have the ability and incentive to raise prices for zinc metal, an important input for many EU industries. The commitments ensure that competition in the European zinc metal market is preserved, so that European customers such as steel galvanisers and car makers can continue to produce valuable consumer goods at low prices and good quality. Without the commitments, the merged entity would have had an even greater ability and incentive to control the level of zinc metal supplies in the EEA, for example by exporting material to LME<sup>93</sup>-certified warehouses outside the EEA or otherwise withholding supplies from the EEA market. The reaction by competitors, including imports, would not have been sufficient to prevent the risk of a significant price increase for zinc metal.

In the area of State aid, on 11 July 2012 the Commission opened a formal investigation on 11 July 2012 into whether notified regional aid in favour of an investment project by German car maker *Porsche* in Leipzig, Saxony, is in line with EU State aid rules. Given the high market shares of Volkswagen-Porsche and the capacity increase brought about by the investment, the Commission has to undertake an in-depth assessment of the aid. The Commission will check whether the aid is necessary and proportionate to provide an incentive for the investment and whether its contribution to regional development outweighs the distortion of competition and trade. The project aims at manufacturing a new passenger car model. The total investment costs amount to EUR 521.56 million. Germany intends to support the project with EUR 43.67 million in the form of a direct grant and an investment premium. The investment project started in April 2011 and its completion is planned for 2014. Leipzig is eligible for regional aid to further the development of certain economic activities or sectors, pursuant to Article 107(3)(c) of the TFEU.

#### **Sanctioning cartels which raise input costs for European manufacturers**

On 28 March 2012<sup>94</sup>, the Commission fined nine European producers of mountings for windows a total of EUR 86 million for operating a cartel by which they agreed on common yearly price increases. The collusion lasted from November 1999 to July 2007 and affected European buyers of windows across the whole EEA. For most of the parties to this case, mountings for windows constitute a large fraction of their turnover. For this reason, the fines of nearly all parties would have been capped at 10% of their worldwide turnover. Exceptionally, the Commission exercised its discretion in accordance with point 37 of its Guidelines on fines and reduced the fines in a way that takes into account the concentration of the total turnover in the sales of cartelized products as well as differences between the parties in view of their individual participation in the infringement.

<sup>92</sup> Case COMP/M.6541 *GLENCORE / XSTRATA*, press release of 22.11.2012, IP/12/1252

<sup>93</sup> London Metals Exchange

<sup>94</sup> Case COMP/39452 *Mountings for windows and window-doors*, Press Release of 28.3.2012, IP/12/313, Summary of Commission Decision of 28 March 2012 relating to a proceeding under Article 101 of the Treaty and Article 53 of the EEA Agreement (notified under document C(2012) 2069 final)



On 26 June 2012, the Commission re-imposed fines on *Mitsubishi Electric Corporation* and *Toshiba Corporation* for their participation in the *Gas Insulated Switchgear cartel*<sup>95</sup>. The fines originally imposed on two companies by the Commission in January 2007 were annulled by the General Court on account of the Commission's use of 2001 as reference year in calculating the fines while upholding all the other findings of the Commission on the infringement committed by those companies and their liability. The June 2012 decision thus ensured that Mitsubishi and Toshiba received an appropriate fine for their participation in the cartel.

## 5. The Agri-food industry

### Overview of key challenges in the sector

The food supply chain connects three important sectors of the European economy: (1) agricultural production; (2) food processing and (3) distribution (wholesale and retail). They play a significant role in Europe's economic, social, and political life and are considerable contributors to EU added value, trade and employment, especially in rural areas<sup>96</sup>. Food purchases also represent a significant part of the household expenditure<sup>97</sup>.

Agriculture and fisheries are among the major policies of the EU. In both sectors, a comprehensive reform is underway that will have a significant impact upon the food chain and consumers. The ongoing reform has also fuelled the debate on the position of different actors in the food chain in general and the relationship between the farming community and retail level in particular.

On 1 January 2012, a *Food Task Force* was set up in DG COMP to better focus on the developments in this increasingly topical sector.

At EU level, the Commission set up in 2010 a High Level Forum for a Better Functioning Food Supply Chain (HLF)<sup>98</sup> in 2010. The HLF brings together a number of Commission initiatives in different policy fields which seek to address the challenges in the sector. It has established a number of expert platforms to focus on different aspects of the food chain. The work of the platform on Business-to-Business (B2B) contractual practices deals with concerns about uneven bargaining power in the food supply chain, which might also involve competition aspects. In December 2012, all operators but farmers agreed on an implementation mechanism of the code of good practices agreed in 2011, which will be introduced in the second quarter of 2013.

Given the many complaints it has received and the reports by some national competition authorities (NCAs) that concentration and practices in the chain may be negatively affecting choice and innovation in the food supply chain, DG COMP has designed and launched the tender for a retail study<sup>99</sup> to assess the evolution and drivers of the evolution of choice and innovation. The study will (1) provide quantitative evidence into the Impact Assessment that

<sup>95</sup> Case COMP/39966 *Gas Insulated Switchgear re-adoption*, Prohibition Decision of 27.6.2012, C(2012) 4381 final

<sup>96</sup> For an overview, see the Report on the Competitiveness of the European Agro-Food Industry of 17 March 2009 ("Competitiveness Report"), p. 59, available at [http://ec.europa.eu/enterprise/sectors/food/files/high\\_level\\_group\\_2008/documents\\_hlg/final\\_report\\_hlg\\_17\\_03\\_09\\_en.pdf](http://ec.europa.eu/enterprise/sectors/food/files/high_level_group_2008/documents_hlg/final_report_hlg_17_03_09_en.pdf)

<sup>97</sup> The share of food and non-alcoholic beverages in the household budget differs across countries. For EU27 it accounted for almost 13%; [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-13-002/EN/KS-SF-13-002-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-13-002/EN/KS-SF-13-002-EN.PDF)

<sup>98</sup> [http://ec.europa.eu/enterprise/sectors/food/competitiveness/forum\\_food/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/food/competitiveness/forum_food/index_en.htm);  
[http://europa.eu/rapid/press-release\\_MEMO-12-941\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-941_en.htm)

<sup>99</sup> COMP/2012/015 study on "The economic impact of modern retail on choice and innovation in the EU food sector", published in the Official Journal OJ/S S244 on 19.12.2012 (Reference: 2012/S - 244 400412)

the Commission will carry out in 2013 on possible actions (including possibly regulation) at EU level on unfair commercial practices, and (2) build further on the work of the NCAs to find out whether certain local areas and/or specific product categories face competition problems.

The reforms of the Common Fisheries (CFP) and Agricultural Policies (CAP) put forward by the Commission in 2011 have important repercussions for competition in these sectors<sup>100</sup>. In particular, the CAP rules play a significant role for competition in the upstream food supply chain. To remedy the perceived lack of bargaining power of the farmers, the CAP proposal seeks to strengthen the role of Producer Organisations (POs) in all sectors of agricultural production. As the members of POs are independent agricultural producers and their production is integrated to varying degrees in the POs, it is essential to ensure that the POs function in a pro-competitive way. The proposal confirms that Articles 101 and 102 TFEU apply to agricultural production, and keeps the current, limited derogations from Article 101 to agreements between farmers essentially in their present form.

The amendments put forward in the European Parliament draft report on the CAP legislative proposals go considerably beyond the Commission's proposal to exempt agreements and practices of farmers from competition rules. These amendments contain measures that e.g. would confer to POs powers to, under certain circumstances, fix prices, control output and adopt far-reaching crisis measures without any antitrust control<sup>101</sup>.

### **Contribution of EU competition policy in tackling the challenges**

The Commission, in close cooperation with the NCAs, has been an active participant in the legislative process advocating a procompetitive policy vis-à-vis other actors in the legislative process and the actors of the food chain.

#### *Enforcement and cooperation with the NCAs*

Agricultural and food markets are often national or regional in scope. Therefore, NCAs play a key role in applying competition law in this sector. DG Competition has cooperated closely with NCAs within the framework of the *European Competition Network* (ECN) in order to further develop a coherent and common approach and to ensure that food markets remain competitive and work efficiently. In this context, on 21 December 2012, the Heads of the European Competition Authorities adopted a resolution on the CAP in which they underlined that the enforcement of competition rules helps to ensure a productive, strong and effective agricultural sector.

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<sup>100</sup> [http://ec.europa.eu/fisheries/reform/index\\_en.htm](http://ec.europa.eu/fisheries/reform/index_en.htm) and [http://ec.europa.eu/agriculture/cap-post-2013/legal-proposals/index\\_en.htm](http://ec.europa.eu/agriculture/cap-post-2013/legal-proposals/index_en.htm)

<sup>101</sup> In particular the Dantin report of 5 June 2012 on the proposal for a regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation), <http://www.europarl.europa.eu/committees/en/agri/draft-reports.html?linkedDocument=true&ufolderComCode=AGRI&ufolderLegId=7&ufolderId=07522&urefProcYear=&urefProcNum=&urefProcCode=#menuzone>

**Report by the European Competition Network: competition enforcement intensified after the food price crisis in 2007<sup>102</sup>**

On 24 May 2012 the Commission published *a report of the ECN* on the enforcement of competition law in the food sector by competition authorities across Europe. The report showed that the food sector has been a priority of competition authorities over the last few years and that their action has intensified since the food price crisis broke out in 2007. From 2004 to 2011, NCAs have investigated more than 180 antitrust cases, taken close to 1,300 merger decisions and undertaken more than 100 monitoring actions. The report also made clear that antitrust and merger activity has benefited all levels in the chain, in particular farmers, suppliers and consumers. The majority of cases concerned processing and manufacturing and, to a lesser extent, the retail level. More than 50 cartels involving price fixing, market and customer allocation as well as the exchange of sensitive business information have been prohibited, as have exclusionary practices that were to the detriment of farmers or suppliers.

*Merger decisions by the Commission in the food sector*

The food sector is subject to on-going globalisation and consolidation, as reflected in the number of mergers the Commission dealt with in 2012. Particular attention was paid to the sugar markets. The current high prices and scarcity of sugar across the EU make it all the more important to maintain competition in the already concentrated European sugar markets and to ensure that supplies are available to consumers at reasonable prices. In the *Südzucker / ED&F MAN* decision<sup>103</sup> on 16 May 2012 the Commission, following an in-depth review, cleared on 16 May 2012 under the EU Merger Regulation the proposed acquisition of control by Südzucker of Germany, Europe's largest sugar producer, over ED&F MAN of the UK, the second largest sugar trader worldwide, which is also active in sugar production. The approval was made conditional upon the divestiture of ED&F MAN's interests in the Brindisi refinery, the biggest and most modern production facility in Italy. Those commitments ensure that the Brindisi refinery will remain a viable and competitive force in Italy, independent from the merged entity.

## **6. The Pharmaceutical and health services sector**

### **Overview of key challenges in the sector**

Both pharmaceuticals and health exhibit a number of common characteristics: the prescribers of the goods or services in question (i.e. the physicians) are different from the consumers (i.e. the patients). Similarly, the payers (i.e. usually sickness funds within the Member States) are different from the prescribers and the consumers. Thus, prescribers and consumers will be less price sensitive than in other markets. Furthermore, the pharmaceutical and health care sectors are both fragmented by national regulations regarding authorisation, pricing and reimbursement status of the goods or services concerned. That fragmentation of the Single Market can give rise to artificial barriers to entry. EU competition policy has a key role to play in contributing to competitive outcomes, cost-containment and innovation in this important area.

The pharmaceutical sector is highly regulated and R&D driven. On the supply side, originator companies aim to bring innovative products to the market. The patent system provides the legislative framework allowing the companies to reap the benefits of their successful R&D activities. During patent protection, competition mainly takes place on innovation between

<sup>102</sup> [ECN activities in the food sector](http://ec.europa.eu/competition/ecn/food_report_en.pdf) - Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector (24 May 2012) Drafted by the ECN food subgroup, Available at [http://ec.europa.eu/competition/ecn/food\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/food_report_en.pdf) See MEMO/12/373 of 24.5.2012

<sup>103</sup> Case COMP/M.6286 *SÜDZUCKER / ED&F MAN*, press release of 16.5.2012, IP/12/486

originator companies. Upon loss of exclusivity, generic companies typically enter the market with much lower price bio-equivalent versions of the originator products. Generic entry on patent expiry entails savings for public budgets. The threat of generic entry also incentivises originator companies to pursue their R&D efforts to develop new and innovative proprietary medicines. Thus, at the point of loss of exclusivity, competition on price is added to competition on innovation between originator and generic companies or between generic companies.

A key issue of concern from the perspective of competition policy is conduct which is aimed at unduly delaying or blocking generic entry or the development and launch of innovative medicines. Such practices were analysed in general terms in the Commission's sector inquiry, the findings of which were published in the final report in 2009<sup>104</sup>. As set out in the final report, such practices can *inter alia* involve misuses of regulatory systems applicable to the pharmaceutical market, misuses of the patent system and misuses of patent rights (e.g. in connection with patent settlement agreements). The judgment by the Court of Justice on 6 December 2012 in the *AstraZeneca* case, upholding to a very large extent the Commission's finding decision from 2005, confirmed that misuses of the patent system and the regulatory system applicable to the pharmaceutical market may, in certain circumstances, constitute abuses of a dominant position within the meaning of Article 102 TFEU.

Improving competition in the pharmaceutical sector may also require improvements in the regulatory framework. For example on 1 March 2012 the Commission tabled a proposal to repeal and replace the Council Directive 89/10/EEC (also known as the *Transparency Directive*)<sup>105</sup>. The aim is to make sure that medicines enter the market faster by further streamlining and reduce the duration of national decisions on pricing and reimbursement of medicines. In the future, such decisions should be taken within 120 days for innovative medicines, as a rule, and for generic medicinal products within only 30 days, instead of 180 days as is currently the case. The sector inquiry concluded in 2009 had identified national pricing and reimbursement decisions as a bottleneck to market entry.

The organisation of the health care sector is primarily the responsibility of Member States under Article 168 TFEU. However, to the extent that the activities in question involve the offering of goods or services in the market<sup>106</sup>, the provision of health care goods or services is generally subject to EU competition rules, as reflected in the Commission's antitrust decision of 2010 sanctioning the French Association of Pharmacists (ONP)<sup>107</sup>.

### **Contribution of EU competition policy in tackling the challenges**

In 2012, the Commission continued to investigate the pharmaceutical sector to detect and pursue possible collusive or otherwise anticompetitive conduct by originator and generic companies. Anticompetitive conduct can take place in the context of competition between originator firms, competition between originator, generic firms and between generic firms. In particular, as a follow up to the sector inquiry concluded in 2009, it launched investigations in several individual cases.

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<sup>104</sup> Available at <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>

<sup>105</sup> Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems. (OJ No 40, 11.2.1989, p. 8)

<sup>106</sup> Cases C-118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36; Joined cases C-180/98 to C-184/98 *Pavlov*, [2000] ECR I-6451

<sup>107</sup> Commission Decision of 8 December 2010, Case COMP/39510 *Ordre National des Pharmaciens*

As regards possible anticompetitive conduct delaying generic market entry, the Commission issued statements of objections in two cases in 2012. According to the statement of objections in the Perindopril case, the Commission takes the preliminary view that *Les Laboratoires Servier* and several generic competitors entered into agreements where in exchange for payments by *Servier* the generic companies agreed not to enter the market with their cheaper generic products and/or not to further challenge the validity of the patents that protected *Servier's* more expensive medicine. In addition, *Servier*, in the Commission's preliminary view, bought technologies that would have enabled generic competitors to enter the market.

According to the statement of objections in the Citalopram case, the Commission took the preliminary view that *Lundbeck* and several generic competitors concluded agreements at a time when generic entry became possible in principle and where, in exchange for value transfers from *Lundbeck*, the generic companies abstained from entering the market with generic citalopram.

Two further cases, *Cephalon*<sup>108</sup> and *Fentanyl*<sup>109</sup>, which were opened in 2011 and continued to be investigated during 2012, predominantly concern agreements and contractual arrangements that potentially delayed market entry of generic medicines, i.e. potential infringements of Article 101 TFEU. The Commission also pursued a number of investigations into cases of generic delay where no official openings have taken place yet<sup>110</sup>.

In addition, in 2012, the Commission ceased its antitrust investigation into the pharmaceutical companies *AstraZeneca* and *Nycomed*<sup>111</sup>. The investigation focused on suspected individual or joint action to delay the market entry of generic medicines.

**The sector inquiry and its follow-up have not chilled recourse to prima facie unproblematic patent settlements**

The European Commission continued to monitor the market and obstacles to generic entry with particular emphasis on patent settlements. Following the sector inquiry, the Commission had already carried out two exercises of monitoring patent settlements in the EU in 2010 and 2011. A third monitoring exercise was carried out in 2012. It confirmed the positive trend of potentially problematic patent settlements stabilizing at a low number. In fact the share of potentially problematic settlements decreased to 11% of the overall number of settlements in the period of 2011, compared to 22% in the period of January 2000-June 2008, (i.e. as investigated during the sector inquiry)<sup>112</sup>. At the same time, recourse to *prima facie* unproblematic patent settlement types continued to increase by 500% in comparison with the results of the sector inquiry.

<sup>108</sup> See Press Release IP/11/511 under:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/511&format=HTML&aged=0&language=EN&guiLanguage=fr>

<sup>109</sup> See Press Release IP/11/1228 under:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1228&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>110</sup> See press releases: MEMO/10/647 of 3/12/2010:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/647&format=HTML&aged=1&language=EN&guiLanguage=en> ; MEMO/09/435 of 6/10/2009:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/435&format=HTML&aged=1&language=EN&guiLanguage=en>

<sup>111</sup> See press release: IP/12/210 of 1/3/2012: [http://europa.eu/rapid/press-release\\_IP-12-210\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-210_en.htm?locale=en)

<sup>112</sup> For further information on patent settlement monitoring see:

<http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>

## 7. Transport

### Overview of key challenges in the sector

The transport sector is one of the engines of the Single Market. It enables the free flow of people, goods and services within the Single Market, thereby contributing to the competitiveness of European industry and the achievement of the Europe 2020 objectives.

The transport sector provides essential inputs for other economic activities. Transportation costs represent on average 10-15% of the costs of a finished product. That figure includes the costs of own account transport operations as well as the costs of purchasing transport services from specialised companies. Companies whose main activity is the provision of transport (and transport related) services generate around 5% of EU GDP. They employ more than 10 million persons, which is around 5% of the EU labour force.

To improve the performance of the transport sector, the EU has promoted the integration and liberalisation of transport markets. There is much variation between the different transport sectors regarding the speed and scope of the liberalisation process. While the air and maritime transport markets have been open to competition for many years, the market for international passenger services by rail was only liberalised in 2010. Markets for national rail passenger services have not yet been opened to competition in many Member States. Railway services are also perceived by consumers as unsatisfactory. In the 2012 Consumer Markets Scoreboard, train services ranked 27<sup>th</sup> among 30 consumer services markets<sup>113</sup>.

An overarching objective of rail transport policy is to increase the share of freight and passengers transported via rail.

### Contribution of EU competition policy in tackling the challenges

#### *Fighting remaining regulatory constraints and entry barriers*

Competition policy aims to ensure that markets operate efficiently to the benefit of the end consumer. This is particularly important in the transport sector where newly competitive markets have been emerging as a result of the market integration and liberalisation process. On the one hand, the Single Market has created new opportunities for cross-border entrants, resulting in increased competition on fares and services offered between different transport service providers. On the other hand, regulatory constraints and entry barriers in the sector remain quite common, contributing to a concentration of supply and a weakening of competition. In addition, State aid given to transport companies may lead to undue distortions of competition.

#### *Potential anticompetitive effects resulting from increased concentration in air transport sector*

In air transport, the emergence of low-cost carriers has contributed to a significant reduction in fares and a proliferation in the number of regional airports served, which in turn resulted in an increase in passenger numbers. The economic and financial crisis, however, caused a sharp drop in traffic. As a result, many regional airports in Europe are making losses and only survive thanks to the subsidies they receive from local authorities. The large European hub airports, on the other hand, remain congested. The long term outlook indicates that the share of air transport will continue to grow and that more and more airports will become congested, at least during peak hours. In addition, the crisis allowed the strongest airlines to consolidate

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<sup>113</sup> 27<sup>th</sup> position out of 30 markets



their position as market leaders. Some of the smaller and less efficient airlines have exited the market, been restructured or merged into larger entities. Most of the remaining European airlines have decided to join one of the three big alliances – *Star*, *SkyTeam* and *oneworld* – as national restrictions on ownership and control prevent cross-border consolidation through airline mergers. The main competition concerns relate to the concentration of supply on certain routes resulting from airline mergers within the EU and the possible anticompetitive impact of different forms of collaboration within alliances, which range from bilateral codeshare<sup>114</sup> agreements to full-fledged joint ventures. In cases involving transatlantic alliances, the Commission worked closely with the US Department of Transportation.

One of the purposes of merger control in air transport is to ensure that airlines do not undo the pro-competitive effects of liberalisation by acquiring close competitors. On 10 February 2012, the International Airlines Group (IAG), the holding company of British Airways and Iberia, notified its intention to acquire British Midlands Limited (bmi), which had a strong presence in the UK as well. On 30 March 2012, the Commission decided<sup>115</sup> to approve the proposed transaction following IAG's commitment to release 14 daily slot pairs at London Heathrow to competitors and to carry connecting passengers feeding long-haul flights of competing airlines. On 24 July 2012, Ryanair notified<sup>116</sup> its third attempt to take over Aer Lingus, its main rival at Dublin airport. In November 2012, the Commission issued a statement of objections outlining its preliminary assessment of the impact of the proposed transaction.

On 23 January 2012, the Commission re-opened its investigation<sup>117</sup> into the *SkyTeam alliance*. The new investigation is more limited in scope and focuses exclusively on the joint-venture agreement between *Delta*, *Air France/KLM* and *Alitalia*, which co-operate closely on prices, capacity and schedules for passenger air transport services on the transatlantic market. The investigation<sup>118</sup> of the *Star Alliance* transatlantic joint-venture was opened in 2009 and has reached a more advanced stage. On 21 December 2012, the Commission decided to test the commitments proposed by *Lufthansa*, *Air Canada* and *United Airlines*. The commitments included slot releases at the Frankfurt and New York airports, competitors' access to the parties' connecting traffic, and the ability of competitors to combine their fares with those of the parties. The Commission also continued monitoring the commitments offered by *British Airways*, *Iberia* and *American Airlines* in the *oneworld* investigation<sup>119</sup>, which was concluded in 2010. All three alliances are therefore currently under investigation or have been investigated by the Commission.

#### **Increased scrutiny of State aid to regional airports and low cost carriers**

In 2012 the Commission increased its scrutiny of aid granted to regional airports and low-cost carriers. Against that backdrop, the Commission adopted 16 decisions to open a new formal investigation procedure or to extend the scope of pending investigations of investment aid to airlines or regional airports<sup>120</sup>. Most of those cases involved discount schemes on airport charges given to low cost carriers, often in combination with marketing agreements of doubtful value to the airports. The Commission also adopted three final State aid decisions,

<sup>114</sup> Agreement between two or more airlines to list certain flights in a reservation system under each other's names

<sup>115</sup> Case COMP/M.6447 *IAG/ BMI*, IP/12/338, 30.3.2012

<sup>116</sup> Case COMP/M.6663 *Ryanair/Aer Lingus III*

<sup>117</sup> Case COMP/39964 *AF-KL/DL/AZ*, IP/12/79, 27.1.2012

<sup>118</sup> Case COMP/39595 *Continental/United/Lufthansa/Air Canada*

<sup>119</sup> Case COMP/39596 *BA/AA/IB*

<sup>120</sup> See IP/12/44 of 25.1.2012, IP/12/108 of 8.2.2012, IP/12/156 of 22.2.2012, IP/12/265 of 21.3.2012, IP/12/350 of 4.4.2012, IP/12/400 of 25.4.2012, IP/12/519 of 30.5.2012 and IP/12/698 of 27.6.2012

concerning notably Tampere-Pirkkala airport and its agreement with Ryanair, the Irish travel tax and the financing arrangements concerning Munich airport Terminal 2<sup>121</sup>. In the first of those decisions, the Commission considered that the agreement between Tampere-Pirkkala airport and Ryanair was concluded on terms that a private investor operating under market conditions would have accepted. In particular, the Commission was able to conclude that the diversification of airlines operating from the airport, a better allocation of resources as well as the reduced overcapacity positively contributed to the operational and financial situation of the airport and increased the market value of the airport for its shareholders.

As regards cartels, in the *Freight Forwarding* case<sup>122</sup> the Commission fined 15 companies a total of EUR 169 million on 28 March 2012. The decision sanctioned four separate cartels aimed at fixing prices and other trading conditions for international air freight forwarding services. Four different surcharges and charging mechanisms applied by freight forwarders to the air transport of goods on important trade lanes (in particular the Europe-USA and the China/Hong Kong-Europe lanes) were subject to the collusive arrangements. The individual infringements took place in different geographical areas during various periods between 2002 and 2007. The infringements were relatively short in duration, between five months and one year and nine months.

#### *Competition concerns resulting from State support and barriers to entry in rail transport*

An overarching objective of rail transport policy is to increase the share of freight and passengers transported via rail. Within this context, the Commission received a number of notifications of State aid for investment and operating expenditures in rail transport. In 2012, the Commission adopted six decisions approving aid for the construction of sidings and intermodal terminals, for rolling stock specific to combined transport as well as for offsetting network access charges<sup>123</sup>.

According to current EU regulation, non-discriminatory access to rail infrastructure should be ensured for railway undertakings. Nevertheless, from a competition policy perspective the Commission is concerned that railway undertakings that are controlled by holdings with subsidiaries that are also active on rail transport markets will leverage their position as subsidiary of the holding and provider of associated services to hamper potential competitors and benefit other subsidiaries of the holding. The Commission has been investigating such issues in the case against *Deutsche Bahn*, the German railway incumbent<sup>124</sup>. The Commission initiated proceedings in the *Deutsche Bahn* case on 13 June 2012 following unannounced inspections in March 2011.

The *Deutsche Bahn* case concerns the supply of traction current by DB Energie, a wholly-owned subsidiary of Deutsche Bahn. DB Energie is the only provider of an input that is indispensable for railway undertakings to operate in Germany: traction current, i.e. the special type of electricity that powers trains. The Commission considers that the pricing system used by DB Energie for selling traction current to railway undertakings may constitute an abuse of a dominant position on the market for the supply of traction current and thereby infringe Article 102 TFEU.

#### *Access to port facilities and fiscal advantages in maritime transport*

In maritime transport, competition policy ensures, *inter alia*, that shipping companies have equal access to essential (port) infrastructures and benefit equally from fiscal advantages offered by the public sector in light of their high exposure to competition from third countries.

<sup>121</sup> See IP/12/833 of 25.7.2012 and MEMO/12/597 of 25.7.2012, IP/12/1057 of 3.10.2012

<sup>122</sup> COMP/39462

<sup>123</sup> See for example IP/12/831 of 25.7.2012

<sup>124</sup> Cases COMP/39678 *Deutsche Bahn I*, COMP/39731 *Deutsche Bahn II* and COMP/39915 *Deutsche Bahn III*



During its investigation of the acquisition of the Swedish sea port terminal Älvsborg by the shipping company DFDS and the terminal operator C.R.O Ports, the Commission addressed concerns that rivals of the merging entities might find their access to the Port of Gothenburg restricted or even closed off completely. On 2 April 2012, the Commission decided<sup>125</sup> to approve the acquisition because: (1) the Port has alternative terminals to the one operated by Älvsborg and (2) the concession agreement concluded between the Gothenburg Port Authority and Älvsborg requires a non-discriminatory treatment of all shipping companies.

In 2012, the Commission approved the prolongation of Swedish and Dutch State aid schemes reducing the social charges borne by shipping companies, because it considered them to be compatible with the Single Market<sup>126</sup>. The Commission also initiated a formal investigation of the Maltese tonnage tax as it had doubts that not only genuine shipping companies were benefiting from that special State aid regime, but also non-maritime companies<sup>127</sup>. Finally, the Commission approved a modification of a Spanish scheme<sup>128</sup> providing for early depreciation of certain assets acquired via a financial leasing. The Commission found that limiting the scope of that measure to tailor-made assets with a construction period of at least 12 months makes it possible to address the concerns of the Spanish shipbuilding sector without distorting competition in the Single Market. As the scheme was otherwise available to all companies with respect to all categories of assets and without any distinction as to the origin of the asset, the Commission considered that the scheme did not amount to State aid.

#### **Public consultations on antitrust and State aid guidelines in the transport sector**

In December 2012 the Commission decided – following a public consultation – to let the 2008 Maritime Antitrust Guidelines lapse with effect from 26 September 2013. The decision was also taken against the background of the adoption of more recent horizontal rules – which apply across different sectors – which are more up to date in terms of legal and economic standards, notably the Horizontal Guidelines from 2010 which contain a chapter on information exchanges, i.e. the main focus of the Maritime Antitrust Guidelines.

In 2012, the Commission also carried out a public consultation on the application of the guidelines on State aid to maritime transport. The Commission will decide on the follow up of that public consultation when the responses are fully analysed.

The responses to the public consultation on the application of the guidelines on State aid in the aviation sector carried out in 2011 were analysed with a view to the adoption of new guidelines in 2013, which will need to better address the public financing of regional airports and airlines. In that context, the Commission will take into account the role of regional airports for accessibility and local development while limiting the distortions of competition and avoiding a duplication of unprofitable airports and a waste of public resources.

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<sup>125</sup> Case COMP/M.6305 *DFDS/C.R.O Ports/Älvsborg*, IP/12/343, 2.4.2012

<sup>126</sup> Cases COMP/SA.33609 *Sweden Maritime Transport Aid*, OJ C142, 26.1.2012 and COMP/SA.34004 *Netherlands Prolongation of the extension of reduced remittances for maritime navigation to commercial cruising vessels*, adopted on 10.5.2012

<sup>127</sup> Case COMP/SA.33829 *Tonnage tax scheme and other State measures in favour of shipping companies in Malta*, IP/12/843, 25.7.2012

<sup>128</sup> Case COMP/SA.34736 *Early depreciation of assets acquired through a financial leasing*, IP/12/1241, 20.11.2012

### **III. ANNEXES**

- (1) List of DG Competition initiatives adopted under CWP 2012
- (2) List of State aid banking cases

## **ANNEX 1: List of DG Competition initiatives adopted under CWP 2012**

- Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 - SWD(2012) 130 final, SWD(2012) 131 final
- Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest
- Communication on EU State Aid Modernisation - COM/2012/ 209 final
- Report on Competition Policy 2011 – COM(2012) 253 final\*
- Communication on short term export credit insurance – (2012/C 398/02)
- EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks - C(2012) 9609/2

[http://ec.europa.eu/competition/state\\_aid/legislation/broadband\\_guidelines\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/broadband_guidelines_en.pdf)

- State aid Scoreboard: Autumn 2012 update<sup>129</sup> – COM(2012) 778 final\*

\* relates to other measures not included in the CWP 2012

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<sup>129</sup> From 2012 only once/year

## ANNEX 2: List of State aid banking cases

### DECISIONS ADOPTED BY THE COMMISSION IN 2012<sup>130</sup>

#### AUSTRIA

Type of measure / Beneficiary	Type of Decision	Date of adoption
SA.31883 Restructuring of Österreichische Volksbanken AG	Final decision <a href="#">IP/12/982</a>	19 September 2012
SA.34716 Recapitalisation of Hypo Tirol	Decision not to raise objections <a href="#">IP/12/1067</a>	4 October 2012
SA.32554 Temporary approval of an emergency recapitalisation in favour of Hypo Group Alpe Adria	Decision not to raise objections <a href="#">IP/12/1315</a>	5 December 2012

#### BELGIUM

##### *Belgium*

SA.9833 (MC11/2009) KBC – phasing out and divestment	Decision not to raise objections <a href="#">EXME/12/21.12</a>	20 December 2012
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##### *Belgium/France/Luxembourg*

SA.33760, SA.33763, SA.33764 (2011/C) Dexia – prolongation of guarantees and extension of the in depth investigation	<a href="#">IP/12/523</a>	31 May 2012
SA.34925 Dexia – Increase of guarantee ceiling	<a href="#">IP/12/578</a>	6 June 2012
SA.34925-SA.34927- SA.34928 (2012/C) Dexia – prolongation of guarantees	<a href="#">MEX/12/0926</a>	26 September 2012
SA.33751, SA.33760, SA.33763, SA.33764 (2011/C) and SA.30521 (MC2/2010) Dexia and Belfius	<a href="#">IP/12/1447</a>	28 December 2012

#### CYPRUS

SA.34827 Rescue recapitalisation of Cyprus Popular Bank (ex-Marfin)	Decision not to raise objections <a href="#">IP/12/958</a>	13 September 2012
SA.35499 State guarantee scheme for Cypriot banks	Decision not to raise objections <a href="#">IP/12/1171</a>	6 November 2012

#### DENMARK

SA.35741 Prolongation	<a href="#">EXME/12/14.12</a>	14 December 2012
SA.34943 Prolongation of the winding-up scheme and extension of the guarantee scheme for merging banks	<a href="#">EXME/12/26.06</a>	26 June 2012
SA 33485 Restructuring plan of Amagerbanken	<a href="#">EXME/12/01.25</a>	25 January 2012
SA.34227 Guarantees for merging banks	<a href="#">EXME/12/02.17</a>	17 February 2012
SA.34423 Support for the merger of Vestjysk Bank and Aarhus Lokalbank	Decision not to raise objections <a href="#">EXME/12/04.25</a>	25 April 2012
SA.34445 (2012/N) The transfer of property-related assets from FIH to the FSC	<a href="#">IP/12/723</a>	29 June 2012

#### GERMANY

SA.34345 Reactivation	<a href="#">EXME/12/05.03</a>	5 March 2012
SA.34897 Prolongation	<a href="#">EXME/12/29.06</a>	29 June 2012
SA.35748 Prolongation	<a href="#">EXME/12/07.12</a>	7 December 2012

<sup>130</sup> As a general rule, aid schemes are reviewable six months after approval. Some individual decisions are subject to a review and possible restructuring plan

SA.34539 (2012/N) Amendment of restructuring plan of Commerzbank	<a href="#">EXME/12/03.30</a>	30 March 2012
SA.34381 Restructuring of NordLB	Decision not to raise objections <a href="#">IP/12/838</a>	25 July 2012
SA.28487 Restructuring aid to BayernLB	Decision not to raise objections <a href="#">IP/12/847</a>	25 July 2012

## GREECE

SA 34149 Prolongation	<a href="#">EXME 12/06.02</a>	6 February 2012
SA.35002 Prolongation		6 July 2012
SA 34148 Prolongation	<a href="#">EXME 12/06.02</a>	6 February 2012
SA.34115 Resolution of T bank	<a href="#">IP/12/485</a>	16 May 2012
SA.34488 Restructuring aid to Proton bank through creation and capitalisation of Nea Proton	<a href="#">IP/12/854</a>	27 July 2012
SA.34823 HFSF Recapitalisation commitment to Alpha Bank	<a href="#">IP/12/860</a>	27 July 2012
SA.34824 HFSF Recapitalisation commitment to National Bank of Greece	<a href="#">IP/12/860</a>	27 July 2012
SA.34825 HFSF Recapitalisation commitment to EFG Eurobank	<a href="#">IP/12/860</a>	27 July 2012
SA.34826 HFSF Recapitalisation commitment to Piraeus Bank	<a href="#">IP/12/860</a>	27 July 2012

## HUNGARY

SA 34077 Extension	<a href="#">EXME//08.03</a>	8 March 2012
SA.35145 Prolongation	<a href="#">EXME/12/30.07</a>	30 July 2012
SA 34078 Extension	<a href="#">EXME/12/07.03</a>	7 March 2012
SA.35144 Prolongation	<a href="#">EXME/12/30.07</a>	30 July 2012
SA.29608 (C37/2010) Recapitalisation of FHB	<a href="#">EXME/12/22.02</a>	22 February 2012

## IRELAND

SA.34746 Prolongation	Decision not to raise objections	1 June 2012
SA.35744 Extension	Decision not to raise objections <a href="#">12/12.12</a>	12 December 2012
SA.35209 Prolongation	Decision not to raise objections <a href="#">EXME/12/03.09</a>	3 September 2012
SA.35819 Prolongation	Decision not to raise objections <a href="#">EXME/14.12</a>	14 December 2012

## ITALY

SA.34344 Amendment	<a href="#">EXME/12/22.02</a>	22 February 2012
SA.35137 MPS recapitalisation	<a href="#">IP/12/1383</a>	17 December 2012

## LATVIA

SA.30704 Temporary approval of support to Latvian Mortgage and Land Bank and opening of in-depth procedure into the measures for the bank's transformation	Opening decision <a href="#">IP/12/77</a>	26 January 2012
SA.34747 Amendments to Parex restructuring plan	<a href="#">EXME/12/10.08</a>	10 August 2012

## LITHUANIA

SA 34288 Extension	<a href="#">EXME/12/06.03</a>	6 March 2012
SA.35129 Prolongation	<a href="#">EXME/12/27.07</a>	27 July 2012
SA.34208 Rescue of the Lithuania's Central Credit Unions	<a href="#">MEX/12/0926</a>	26 September 2012

**LUXEMBOURG**

SA.34440 (2012/C) (ex 2012/N) – Sale of Dexia	Opening decision	3 April 2012
SA.34440 (2012/C) (ex 2012/N) – Sale of Dexia BIL	Final no aid decision <a href="#">IP/12/840</a>	25 July 2012

**NETHERLANDS**

SA.28855 (N 373/2009) ING approval of 2009 restructuring plan	Decision not to raise objections <a href="#">IP/12/468</a>	11 May 2012
SA.33305 and SA.29832 Re-notification of recapitalisation aid to ING	Opening decision <a href="#">IP/12/468</a>	11 May 2012
SA.33305 and SA.29832 Amendment of the ING restructuring	Final decision <a href="#">IP/12/1226</a>	16 November 2012

**POLAND**

SA.34081 Prolongation	<a href="#">EXME/12/08.02</a>	8 February 2012
SA.34811 Prolongation	<a href="#">EXME/12/09.07</a>	9 July 2012
SA.34066 Prolongation	<a href="#">EXME/12/27.2</a>	27 February 2012
SA.34812 Prolongation	<a href="#">EXME/12/29.06</a>	29 June 2012

**PORTUGAL**

SA.34958 Prolongation	<a href="#">EXME/12/27.06</a>	27 June 2012
SA.35743 Prolongation	<a href="#">EXME/12/17.12</a>	17 December 2012
SA.34055 Prolongation	<a href="#">EXME/12/30.05</a>	30 May 2012
SA.35747 Prolongation	<a href="#">EXME/12/17.12</a>	17 December 2012
SA.26909 Banco Português de Negócios	Approval of the restructuring <a href="#">IP/12/315</a>	27 March 2012
SA.34055 (2011/N) - New recapitalisation scheme for banks in Portugal	Decision not to raise objections <a href="#">EXME/12/30.5</a>	30 May 2012
SA.35062 Recapitalisation of Caixa Geral de Depósitos, S.A. (CGD)	Decision not to raise objections <a href="#">IP/12/805</a>	18 July 2012

**SLOVENIA**

SA.34937 Second Recapitalisation of NLB	Decision not to raise objections <a href="#">IP/12/724</a>	2 July 2012
SA.35709 Recapitalisation of NKBM	Decision not to raise objections <a href="#">EXME/12/20.12</a>	20 December 2012

**SPAIN**

SA.34224 Prolongation	<a href="#">EXME/12/09.02</a>	9 February 2012
SA.34904 Extension	<a href="#">EXME/12/29.06</a>	29 June 2012
SA.35069 New recapitalisation Scheme for credit institutions	Decision not to raise objections <a href="#">IP/12/849</a>	25 July 2012
SA.34255 Restructuring of CAM	Decision not to raise objections <a href="#">IP/12/517</a>	30 May 2012
SA.34820 Rescue aid to BFA/Bankia	Decision not to raise objections <a href="#">IP/12/699</a>	27 June 2012
SA.33733 Adjudicación UNNIM Banc a favor de BBVA por el FROB. Continuación de SA.33095 (2011/N) Spain Recapitalisation of UNNIM Banc	Decision not to raise objections <a href="#">IP/12/839</a>	25 July 2012
SA.35369 Urgent recapitalisation of BFA Group	Decision not to raise objections	7 September 2012
SA.33735 Restructuring of CatalunyaCaixa	Decision not to raise objections <a href="#">IP/12/1277</a>	28 November 2012
SA.35253 Restructuring of BFA/Bankia	Decision not to raise objections <a href="#">IP/12/1277</a>	28 November 2012
SA.33734 Restructuring of NovaCaixaGalicia	Decision not to raise objections <a href="#">IP/12/1277</a>	28 November 2012

SA.34053 Restructuring of Banco de Valencia	Decision not to raise objections <a href="#">IP/12/1277</a>	28 November 2012
SA.34536 Restructuring of CEISS	Decision not to raise objections <a href="#">IP/12/1432</a>	20 December 2012
SA.35488 Restructuring of Banco Mare Nostrum	Decision not to raise objections <a href="#">IP/12/1432</a>	20 December 2012
SA.35489 Restructuring of Caja3	Decision not to raise objections <a href="#">IP/12/1432</a>	20 December 2012
SA.35490 Restructuring of Liberbank	Decision not to raise objections <a href="#">IP/12/1432</a>	20 December 2012

#### **UNITED KINGDOM**

SA.34218 UK Credit Easing Schemes	<a href="#">EXME/12/14.03</a>	14 March 2012
SA.34908 Extension	<a href="#">EXME/12/26.06</a>	26 June 2012
SA.35755 Prolongation	<a href="#">EXME/12/14.12</a>	14 December 2012